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Current Topics.

Lord Trevethin.

We record with deep regret the death of Lord Trevethin, which took place last Monday as the result of a tragic accident near Builth Wells, Breconshire. Lord Trevethin was engaged in what during his later years had become his most favoured pastime of fishing, when he stepped and fell into the Wye. Death supervened from heart failure, due to shock caused by too long immersion in unusually cold water. Lord Trevethin was ninety-two; had he been a younger man he might have survived the ordeal. An appreciation appears on p. 624 of the present issue.

The Long Vacation.

The legal holiday which we know as the long vacation and which has already run a week of its course has varied considerably from time to time both as regards the dates of its terminals and as to its duration. At one time, and that not so very far back, it actually lasted for almost three months, from 8th August to 2nd November—All Souls' Day—which fact accounted for the Circuit toast "*Cras Animarum.*" In his diary, Crabb Robinson, the devoted friend of Charles Lamb, and himself a fairly successful member of the Bar, mentions that when in Weimar in 1818 he had a conversation with the Grand Duke who "expressed his disapprobation of the English system of jurisprudence, which allowed lawyers to travel for months at a time. We do not permit that." English lawyers, however, were unmoved by German criticism of the holidays they allowed themselves, and they continued till comparatively lately to have an extended period of relaxation. Then reformers began to be vocal and insisted on the "long" being cut down, first, making it run from 13th August to 23rd October, and afterwards from 1st August to 10th October, and for a year or two making it terminate on 30th September. A shrewd French writer in referring to this prolonged autumn holiday said that the judges find it scarcely sufficient, but that the practitioners, not without reason, consider it much too protracted. Whether this is so or not, we all accept its duration as an integral part of the legal constitution upon which sacrilegious hands are not to be placed save for good cause shown.

Quarter Sessions: Committee's Report.

The report of the Committee appointed by the Lord Chancellor to consider and report what offences not at present within the jurisdiction of courts of quarter sessions should be included in that jurisdiction was published on 30th July (Cmd. 5252, H.M. Stationery Office, price 3d. net). The opinion is expressed that in existing circumstances no indictable offences should be added to those now triable by these courts, but that if and when it shall be enacted that all chairmen of quarter sessions shall be legally qualified by ten years' practice at the English Bar, the following offences shall be brought within the jurisdiction: bigamy, concealment of birth, burglary, indecency between males, offences in relation to forgery of passports, forgery, etc., of telegrams, forgery and uttering accountable receipts for money or goods up to the value of £20, demanding, etc., money on forged accountable receipts up to £20, personation of soldier, offences against the Perjury Act, 1911, offences against the Stamp Duties Management Act, 1891, s. 13, and the Forgery Act, 1913, so far as it replaces repealed parts of that section, offences against the Coinage Offences Act, 1936, except offences relating to making, etc., counterfeit gold and silver coins under s. 1 (1) and offences against ss. 2, 9 and 10, offences against the Malicious Damage Act, 1861, ss. 14 and 15, conspiracies to commit summary offences, any offence when prosecuted on indictment which is now by statute triable summarily or on indictment alternatively except offences specifically excluding quarter sessions jurisdiction, e.g., Prevention of Corruption Acts, 1906-1916. The Committee observes that it follows in law that accessories before and after the fact to felonies, and aiders and abettors in misdemeanours triable at quarter sessions, will be so triable, as also will persons inciting others to commit offences within the criminal jurisdiction of quarter sessions. Moreover, all conspiracies to commit offences triable at quarter sessions will fall within the Quarter Sessions Act, 1842, and will be there triable. The Committee sat under the chairmanship of Sir Archibald Bodkin, K.C., and held six meetings.

Autrefois Convict.

The decisions to which reference was made under the above heading in a "Current Topic" last week were the subject of a statement last Saturday at the South-Western Police Court by Mr. Claud Mullins, who had before him one charged with stealing a bicycle. The prisoner pleaded "guilty" and the learned magistrate, who referred to a number of previous convictions, stated that in his opinion it was not the sort of case he ought to deal with, and but for the two recent decisions—*R.* v. *Sheridan* and *R.* v. *Grant*—he would have committed him for trial. In view of those decisions, he continued, he would have to send the man to a term of imprisonment, and a sentence of six months' hard labour was imposed. The following excerpt from the judgment is taken from the report in *The Times*: "Before those decisions were given it was the law under an earlier decision called *R.* v. *Hertfordshire Justices* [1911] 1 K.B. 612, that up to the moment of a conviction and

sentence a police court could commit a man for trial. The two new decisions have decided that a finding of guilty or a plea of guilty in a police court precludes magistrates from sending a case for trial. In this case I asked the police whether they were content for me to deal with the case, and I was told that they were. I could under s. 24 of the Criminal Justice Act, 1925, have asked for the record before this man pleaded. That is the law, and in my opinion a very unfortunate law, and it seems to me to put the magistrate in an impossible position." The learned magistrate said that the case before him showed the rather devastating results of the two decisions above referred to. It may be noted that *R.* v. *Hertfordshire Justices* was distinguished in *R.* v. *Sheridan*, 80 SOL. J. 535, on the ground that there had been no adjudication before the accused was committed for trial, and that the former case was stated by the Court of Criminal Appeal in the latter to have been "without doubt rightly decided."

Thefts of Motor Cars.

PARTICULARS recently given in the House of Commons relating to the theft and recovery of motor cars are, perhaps, of sufficient interest to justify a short reference here. Sir JOHN SIMON was asked to state in how many instances during the past twelve months it had been reported to the Metropolitan Police that motor cars had been stolen, and to give particulars of how many persons had been convicted for either stealing or receiving cars or parts thereof during that period. He stated that in the twelve months ended 31st December, 1935, 4,164 motor vehicles were recorded by the police as having been stolen or taken without the consent of their owners in the Metropolitan Police District, and of this number 4,052 were subsequently recovered. In the same period 319 persons were proceeded against for thefts of motor vehicles and 218 were found guilty. Separate figures were not, he said, available in regard to the stealing or receiving parts of motor vehicles. In reply to a further question the Home Secretary said that he thought on the whole it was pretty good if the police got back 4,052 of the 4,164 motor vehicles removed. The figures enable one to estimate with some nicety the risk of leaving a car unattended in the Metropolitan Police District, and the chances of recovery. Just over two a week disappear beyond recall, while readers may derive some comfort from the reflection that if on returning to the place where their car was stationed they find it empty, the chances are about 36 to 1 that it will be recovered.

The Thirty-miles-an-hour Speed Limit.

MR. CHARLES MCWHIRTER, who presided at the annual meeting of the Automobile Association, held a few weeks ago at the Savoy Hotel, made some interesting remarks concerning the thirty-miles-an-hour speed limit, and offered some criticism of the present system, both as regards the settlement of the restricted areas and the procedure for testing the reasonableness of local decisions. It was, he said, left to the local authorities to discriminate as to the roads on which the limit should operate. A very large number took the line of least resistance and simply scheduled their entire districts as built-up areas. This he described as quite contrary to the intention of Parliament. The attitude towards the speed limit of the Association, which had had a strenuous time in disentangling the muddle which resulted, had not, it was claimed, been in any way bigoted, but it was obviously absurd for the limit to be extended to broad arterial roads, sometimes with dual carriage-ways, where speeds in excess of thirty miles an hour were perfectly safe under normal conditions. The procedure where a dispute arose was, it was urged, rather cumbersome and unwieldy, because if the local authority and the Ministry of Transport disagreed, a local inquiry had to be held, and it was only after investigation of such inquiries that the Minister was empowered by the Act to override the decision of the local authority. It was stated that A.A. senior officials had appeared at Ministry of Transport inquiries all over the country, and that, as a result of the Association's efforts, considerably more than 300 sections of road had been de-restricted. The speaker welcomed the announcement of the Minister of Transport that the Government would introduce legislation to nationalise the maintenance and control of some 4,500 miles of important trunk roads throughout Great Britain as "a most encouraging indication of a more progressive and enlightened road policy." The time had, the speaker continued, long passed since the construction and maintenance of the highway system were a local matter. To-day, rapid transport with safety was a subject in which the whole nation was vitally concerned, and he felicitated Mr. HORE BELISHA on the enterprise which he and his department had shown in the direction of the precision of a system of trunk roads conforming to a definite specification.

The Planning of Roads.

WHILE on the subject of roads, it will not be out of place to refer to certain remarks made by Mr. DAVID EDWARDS, Borough Engineer and Surveyor of Brighton, in the course of a presidential address delivered by him at the sixty-third annual general meeting of the Institution of Municipal and County Engineers, which was held at Brighton about a month ago. The speaker advocated as the only rational solution to the present situation the construction of a skeleton system of main trunk highways, perhaps from 120 feet to 150 feet in width between fences, radiating from London as a centre. Those would run direct and straight through the length and breadth of the country, with plenty of viaducts and bridges to keep the system free of obstructions, and might parallel in directness and direction the main routes of the railways, or the old direct point-to-point road system of the Romans. They should by-pass the great industrial towns, being linked to them by short feeder roads, and in general be linked up with the existing road system by the branch feeder roads. They would be reserved for fast through traffic, and their width would permit of the segregation of traffic into two, three, or more "speed lanes." Pedestrians would be permitted to cross them only by means of bridges and subways. Then, it was urged, the existing road system, relieved of heavy through traffic, would resume its proper role of serving local needs. The criticism that the existing roads administration is diffuse and uncentralised is, at least, to some extent, off-set by the new proposal to transfer the administration of the trunk roads to the Ministry of Transport, while the advantages claimed for a Ministry of Roads in the direction of co-ordinating efforts, pooling experience,, standardising methods, encouraging research, and raising the standard of efficiency should be realised so far as the most important roads are concerned if Parliament approves the new proposal. With regard to ribbon development, Mr. EDWARDS said that every highway engineer and local authority must have welcomed the passing of the recent Act to restrict such development, although there had been some criticism on the score that the Act did not go far enough in its restrictive powers. While he suggested that it might be followed by further legislation on more comprehensive lines, the speaker intimated that, for the present, it was felt that the local authorities had plenty of scope for activity.

Children and Road Safety.

THE BISHOP OF WINCHESTER recently asked in the House of Lords what steps the Government had taken to carry out the recommendations of the report of the Inter-Departmental Committee (England and Wales) on road safety among schoolchildren. He reviewed the recommendations, which were summarised in these columns a few months ago (80 SOL. J. 354), and urged that their adoption would not succeed to any large extent until much more drastic steps were taken to deal with the small minority of reckless and selfish drivers who made the roads a menace to old and young

alike. It was useless to appeal to their common sense, to their courtesy, or their conscience. The only way to deal with them was by more drastic penalties. This view was supported by other speakers, one of whom spoke of what he described as the extraordinary lenity shown towards those guilty of motoring offences, while another said that the penalties imposed did not, in nine cases out of ten, act as a deterrent, and expressed himself as driven to the conclusion that special courts would have to be established in which motoring offences would have to be dealt with adequately and uniformly. EARL DE LA WARR, Parliamentary Secretary to the Board of Education, said that the Government had still a vast problem to face, but they had, nevertheless, reduced the total deaths by 12 per cent. at a time when there was a great increase of cars on the road. The reduction in the number of children's deaths last year by just over 100 could not, it was said, be regarded with any degree of satisfaction. He agreed that there were people on the roads at present who simply could not be regarded as responsible beings, but whether the treatment at present meted out to them by the courts was sufficiently severe and whether the machinery of these courts was most suitable for dealing with them were, it was intimated, questions which must be considered by the Government as a whole.

Rules and Orders: County Court Rules, 1936.

READERS' attention may be drawn to the County Court Rules, 1936 (S.R. & O. 1936, No. 626/L.17), which have been made by the Rule Committee appointed by the Lord Chancellor under s. 99 of the County Courts Act, 1934. They are to come into force on 1st January, 1937, and, with certain exceptions in regard to pending proceedings, will replace the County Court Rules, 1903, and all County Court Rules of subsequent date, which are revoked. The new rules are published by H.M. Stationery Office at 10s. 6d. net.

Recent Decisions.

IN *Izzard* v. *Universal Insurance Co. Ltd.* (*The Times*, 31st July), the Court of Appeal reversed a decision of MACKINNON, J. (80 SOL. J. 266), who upheld an arbitrator's award in favour of the widow of one killed in a motor accident giving her the right to recover under s. 1 of the Third Parties (Rights against Insurers) Act, 1930, and held that under a policy which contained an exception in regard to liability in respect of the death of any person "other than a passenger carried by reason of or in pursuance of a contract of employment," no right arose in favour of the deceased, who at the time of the accident was being so carried, but under contract with a third party and not with the assured. The indemnity provisions contained in the policy were expressed substantially in the language of the Road Traffic Act, 1930, s. 36.

IN *Re Turner's Will Trusts: District Bank Ltd.* v. *Turner* (*The Times*, 31st July), the Court of Appeal reversed a decision of BENNETT, J., and held that accumulated income amounting to £3,000 in respect of the share of residue of a deceased grandchild of the testator never became vested in the latter's estate. The testator gave a share of residue to such of the children of a deceased son of his as should be living at his death and should have attained or should thereafter attain the age of twenty-eight years. The grandchild, whose interest was in question, attained twenty-one shortly before the testator's death and thereafter died a bachelor and intestate before attaining twenty-eight. The will empowered the trustees to pay the income of an expectant or presumptive share to the beneficiary pending the vesting of his interest. The Court of Appeal intimated that no alteration of the law on this point had been effected by the use of the word "shall" in s. 31 of the Trustee Act, 1925, in place of the word "may" in s. 43 of the Conveyancing Act, 1881. Section 69 of the former Act applied to the will under consideration, and the payments which the trustees were empowered to make were discretionary and not obligatory.

IN *Stewart* v. *Sashalite Ltd.* (*The Times*, 30th July), it was held that the defendant company, which had been formed for the manufacture of a flash lamp used in photography and had agreed to pay the plaintiff £1,000 "out of the first profits of the company and in priority to all dividends payable in respect of any shares in the capital of the company," was justified in applying the balance of £698 odd shown in the profit and loss account partly to the writing off of preliminary expenses and partly (some £304) to the patents reserve account. BRANSON, J., intimated that the foregoing words of the agreement meant "when the directors come to consider the payment of a dividend, they must first pay the plaintiff his £1,000 out of the money which would otherwise be available for dividend."

IN *F. W. Woolworth & Co. Ltd.* v. *Lambert* (*The Times*, 30th July), the Court of Appeal upheld the decision of CLAUSON, J., referred to in this column in our issue of the 7th March last, p. 175, and reported 80 SOL. J. 186, but the judgments in the Court of Appeal exhibit differences on the question whether the proposed alterations to the premises were "improvements" within the meaning of s. 19 (2) of the Landlord and Tenant Act, 1927. The plaintiffs desired to connect up the demised premises with premises not belonging to the defendant and occupied by them under a lease with the object of giving increased width. The Master of the Rolls and ROMER, L.J., intimated that the proposed alterations were "improvements" under the Act. GREENE, L.J., expressed agreement with CLAUSON, J., to the effect that the suggested alterations were not within the meaning of the word "improvements" in the section.

IN *George Legge & Son Ltd.* v. *Wenlock Corporation* (*The Times*, 1st August), CROSSMAN, J., held, on a point of law formulated under Ord. XXXIV, r. 2, prior to the calling of evidence, that a change of status from a natural stream to a sewer within the meaning of the Public Health Act, 1875, was possible in law. Leave to appeal on the point, to be determined before the calling of evidence, was given.

IN *Sim* v. *Stretch* (*The Times*, 23rd July), the House of Lords reversed a decision of the Court of Appeal and held that words in a telegram requesting the plaintiff to send a domestic servant's possessions "and the money you borrowed, also her wages," were incapable of a defamatory meaning, and that on this issue the judge should have withdrawn the case from the jury. It was a case where there was only one reasonable meaning, which was harmless, and where a defamatory meaning could only be given by inventing a set of facts which were not disclosed and were, in fact, non-existent. Judgment had been entered for £275, of which £250 were in respect of the alleged libel. The House of Lords reduced the amount to £25 which had been awarded on the ground that the defendant had wrongfully induced the servant to leave the plaintiff's service unlawfully and without his consent and against his will.

IN *Victoria Spinning Co. (Rochdale) Ltd.* v. *Matthews* (*The Times*, 23rd July), the House of Lords upheld a decision of the Court of Appeal which made an award in favour of the respondent for compensation in respect of serious permanent disablement sustained by him while in the employment of the appellants and held that the respondent, who acted in contravention of a prohibition in cleaning the bars of a machine while in motion, had nevertheless suffered the disablement in the course of his employment within the meaning of s. 1 (2) of the Workmen's Compensation Act, 1925. LORD RUSSELL intimated that it was not the law that the employer could by the defence of added peril deprive the workman of the benefit of the sub-section aforesaid where the only peril alleged to be added was that which followed from the contravention referred to in the sub-section. See *Wilsons and Clyde Coal Co.* v. *M'Ferrin* and *M'Aulay* v. *James Dunlop and Co.* [1926] A.C. 377.

Lord Trevethin.

THE Long Vacation, designed as it is to bring rest of body and new invigoration of mind to each member of our busy profession, is not, however, exempt from "the abhorred shears." Of this we are again painfully reminded by the tragically sudden end of Lord Trevethin while following his favourite pastime of salmon fishing in the River Wye, whose every pool he knew so intimately, having for years fished them assiduously. Although he had long passed the Psalmist's computation of the allotted span of life, he showed little sign of his weight of years and was as keen as ever, and much more vigorous, mentally and physically, than many another much younger in years than he.

Although it is now a long time since he left the Bench he was affectionately remembered by all who had the privilege of his acquaintance, and who knew and admired his great powers of administration, never exhibited spectacularly, but always present. And now we sincerely mourn his loss.

In many ways the late Lord Trevethin had a remarkable career. At Cambridge he was placed second in the First Class in the Law Tripos of 1866, exactly seventy years ago, and with that academic distinction he came to the Middle Temple, where he was called to the Bar in 1869. Soon he was widely known as a counsel who could, and did, on behalf of his clients, put his points clearly and forcibly, ever eschewing anything in the nature of the dramatic. In due time his merits were recognised by his appointment in 1882 as junior counsel to the Admiralty, and three years later by his appointment as Recorder of Windsor, an office he retained till he was called to step up higher—to the Bench of the High Court. In 1897 he took silk, and his versatility was again reflected in the strikingly varied class of work in which he was briefed—rating, revenue, local government, commercial cases—and having among his many clients such diverse bodies as the North Eastern and Great Western Railway Companies, and the Jockey Club. To the elucidation and determination of the intricate problems in these varied branches of law he brought the same equable temperament in their study, and the same quiet forcefulness in their presentation to the court. It was soon seen that ere long he would reach the Bench, and as a kind of apprenticeship for the post he was twice selected to act as Commissioner of Assize, these appointments being the prelude to the notification that he had been selected by the Lord Chancellor to fill the vacancy created by the lamented death of Mr. Justice R. S. Wright. No two distinguished lawyers were more dissimilar in manner. Wright was impulsive to a degree, apt to jump to hasty conclusions which had to be corrected in the Court of Appeal. Indeed, this flaw in his judicial character was often made the subject of jocular comment by his colleagues. It is said, for example, that Lord Bowen, finding him very early on a working day in the Athenæum, asked how that was. "Oh!" replied Wright, "I have finished my list," to which Lord Bowen is reported to have commented: "Don't you think you had better go back and hear the other side?" The present writer well remembers him "stopping" the late Sir Albert Bosanquet and giving judgment against him, with the consequence, when this was pointed out to him, that he had to hear the case all over again. Mr. Justice A. T. Lawrence (as Lord Trevethin then was) never committed faults such as these. Only after hearing the matter in debate fully argued did he give judgment, and rarely were his decisions reversed in the higher tribunals.

During his term of office as a puisne judge a great variety of work fell to him as it does to most members of the Bench. For a time he was President of the Railway and Canal Commission when it really was occupied with railway matters, and not, as now, with considering sundry questions as to coal production and the like. Rarely does it fall to the lot of a puisne to reach the chief seat in the King's Bench Division and to be the proud wearer of the collar of SS. But this honour fell to Mr. Justice A. T. Lawrence, who shortly afterwards was created a peer with the title of Lord Trevethin. Promotions are variously regarded, much depending upon the person who regards them. It was whispered at the time that the late Lord Darling considered that he should have been preferred, and accounted for the fact of being passed over by the remark that he was not old enough! Short though Lord Trevethin's term of office as Chief Justice was, he filled it to the admiration of all. It was generally known that he was to fill the post temporarily, and in due course his resignation, which had been tendered some considerable time earlier, was suddenly accepted, so suddenly, indeed, that it came in the middle of the hearing of a case which, in view of this, had to be settled. The hurried way in which Lord Trevethin's judicial career was thus terminated provoked a good deal of adverse comment, but the late noble lord did not complain.

Breaches of Price Maintenance Agreements.

THE parties to an agreement may describe a stipulated sum as liquidated damages, but this description is not conclusive as to its character. The court may nevertheless hold that the sum, having been fixed *in terrorem*, is a penalty, and therefore irrecoverable. The factors for consideration, in deciding this issue, were re-stated in *Imperial Tobacco Co. (of Great Britain and Ireland) Ltd.* v. *Parslay* (1936), 80 SOL. J. 464. The defendant had a stall in Watford Market, where he sold cigarettes at cut prices, e.g., Gold Flake at 11d. a carton, instead of 1s. This was a breach of his agreement with the plaintiffs, who claimed an injunction and damages amounting to £165, viz., the amount due in respect of eleven breaches at £15 each. Mr. Justice Goddard granted the injunction, but held that, in view of the disproportion between the price of the article and the agreed sum payable on a breach, the amount was a penalty and irrecoverable. This decision was reversed by the Court of Appeal, and Lord Wright, M.R., held that the relevant disproportion was not between the price of the article and the stipulated sum, but between that sum and the possible or probable amount of the damage. Where it was impossible to specify in advance or to prove the actual damage, the only question was whether the stipulated sum was so extravagant or exorbitant that it could not be regarded as having any real relation to any loss which the plaintiffs could possibly sustain. As the above sum was a fair pre-estimate of the damage, it was recoverable on each occasion. There was also no reason for introducing into the question any consideration of the relative wealth or poverty of the two parties. The facts that the plaintiffs were a powerful and influential company, and the defendant a trader in a small way of business, were therefore irrelevant to the question whether the sum stipulated as damages was exorbitant or extravagant. Lords Justices Slesser and Romer agreed that the appeal should be allowed, with costs.

The leading case on this subject is *Dunlop Pneumatic Tyre Co. Ltd.* v. *New Garage & Motor Co. Ltd.* [1915] A.C. 79. The respondents sold tyres for £3 12s. 11d. instead of for £4 1s. each, and the appellants claimed an injunction and £5 damages, in accordance with an agreement between the parties. Mr. Justice Phillimore granted an injunction and gave judgment for £250, the amount of damages assessed by the Master, who found that the agreed sum of £5 was liquidated damages. The Court of Appeal reversed the finding of the Master, and held that the £5 was a penalty, whereby the plaintiffs were only entitled to nominal damages, viz., £2. The House of Lords restored the decision of the Master, and Lord Dunedin pointed out that it was no obstacle to the sum stipulated being a genuine pre-estimate of damage, that the consequences

of the breach were such as to make precise pre-estimate almost an impossibility. On the contrary, that was just the situation when it was probable that pre-estimated damage was the true bargain between the parties.

The distinction between a penalty and liquidated damages was pointed out in *Clydebank Engineering & Shipbuilding Co. Ltd.* v. *Don Jose Ramos Yzquierdo y Castenada* [1905] A.C. 6. The appellants had agreed to build four torpedo-boat destroyers for the Spanish Government during the Spanish-American war. The penalty for late delivery was agreed at £500 per week for each vessel, but delivery was delayed through strikes and bad weather. Nevertheless, delivery was accepted, without protest, after the war was over, and two years elapsed before any claim was made. The Lord Ordinary then gave judgment for £67,500, in respect of 135 weeks' delay, and the Second Division of the Court of Session affirmed this decision. The House of Lords also upheld the judgment, and Lord Halsbury, L.C., remarked that it was hopeless to contend that the parties only intended the agreement as something *in terrorem*. Both parties recognised the importance of time, which was regarded as the essence of the contract. The particular sum agreed was suggested by the defendants, and it was not a plausible argument to contend that it was unconscionable or not to be insisted upon.

The justification for price maintenance agreements was pointed out by Lord Atkinson, in the Dunlop case, *supra*. They benefit not only the manufacturer, but the agents themselves, who would be driven out of business if their competitors were permitted to cut prices without restraint. The recent trend of decisions appears to be in favour of upholding such agreements. For instance, in *English Hop Growers Ltd.* v. *Dering* [1928] 2 K.B. 174, the defendant had agreed to pay £100 per acre as liquidated damages in respect of all hops disposed of, otherwise than through the plaintiffs. The defendant sold the crop of 63 acres direct, and became liable for £6,300 under the agreement. His defence was that the agreement was void, as being in restraint of trade, and that £100 an acre was a penalty. Mr. Justice Rowlatt upheld these contentions and gave judgment for the defendant. The Court of Appeal reversed this decision, and the present Lord Sankey observed that the failure of the defendant to fulfil his contract might be compared to the throwing of a stone into a pond. The effect extended to a far greater area than the mere spot into which the stone was thrown.

In spite of the absence of recent reported cases, on the other side of the line, cases must still occur in which the effort to maintain the price of an article may justify the epithet of a "ramp." In such an event the stipulated sum could, it is submitted, be pleaded as having been fixed *in terrorem*, and an action for breach may reasonably be defended.

Company Law and Practice.

Points and Principles relating to the alteration of a Company's Articles—I.

Although the alteration of a company's articles is a matter of common occurrence, the operation involves several important points of principle, which are sometimes liable to be overlooked even by those with the best of good intentions.

In accordance with s. 6 of the 1929 Act, a company limited by shares may, and a company limited by guarantee or otherwise must, have registered with its memorandum articles of association; they must be signed by the subscribers to the memorandum and they must prescribe regulations for the company. Furthermore, if a company which is limited by shares and registered after the 1st November, 1929, does not register articles or if the articles which it does register do not entirely exclude or modify the regulations contained in Table A, then, in either case, the regulations of Table A become, by virtue of s. 8 (2), the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles. The distinctions between an alteration of the memorandum and an alteration of the articles are most important, and in any consideration of the latter operation it is essential to remember that, save in so far as the Act provides (see, for example, s. 55, which deals with reduction of capital), the articles cannot be altered so as to effect an alteration or modification of the memorandum, by which, as everybody knows, the character of permanency is attached to the constitution of the company.

The actual section that deals with the alteration of articles is s. 10. Sub-section (1) thereof provides that, subject to the provisions of the Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and by s. 10 (2) any alteration or addition so made in the articles is, subject to the provisions of the Act, to be as valid as if originally contained therein, and is to be subject in like manner to alteration by special resolution. From the wording of the section, it follows that the special resolution in question must be a valid special resolution in accordance with the statutory requirements, and that the purported alteration to the articles will not be valid unless it is a special resolution that is in fact passed: a proposition which is also supported by authority. It appears, however, from the decision in *In re Miller's Dale and Ashwood Dale Lime Company*, 31 Ch. D. 211, where a director of the company who took shares in new capital raised under a defective resolution, the company afterwards going into liquidation, was held to be precluded from objecting to the validity of the resolution as a ground for his removal from the list of contributories, that the defect in the resolution affects only the position of the company and its shareholders *inter se*, and does not concern the creditors. And again, an exception to the general proposition that I have stated is shown by the Scottish case of *Muirhead* v. *The Forth and North Sea Steamboat Mutual Insurance Association* [1894] A.C. 72. There, the appellant insured his ship with the company, under a policy of which the provisions contained in the articles were deemed and considered part, and which had printed on the back the articles, together with an addition to them to the effect that it was a condition of the insurance that the assured should keep one-fifth of the value of the ship uninsured. This addition had been made five years before the date of the policy by a special resolution which had been registered but which was not in accordance with the then statutory requirements under the 1862 Act governing such a resolution, inasmuch as it had not been confirmed by a second special resolution. The appellant had also insured with another company, the result being that he had insured altogether for more than four-fifths. The House of Lords arrived at the conclusion that the irregularity in the procedure by which the article had been allowed did not prevent it from being binding upon the appellant, and that, as the condition contained in that article had been broken, he was not entitled to recover upon the policy.

The position of original subscribers to a company's memorandum and articles, in relation to an alteration in the latter, is deserving of some attention. In *In re The United Kingdom Ship Owning Company Limited: Felgate's Case*, 2 De. G. J. and S. 456, the facts were that F. had signed the company's memorandum and articles as an original subscriber; but after signature and before they were registered, the articles had been materially altered without his knowledge though with the knowledge and approbation of the persons then managing the company. The alteration was effected by the removal and destruction of a sheet of the original articles, containing the names of the persons who were to be appointed directors, and by the substitution therefor of another sheet. There was a

conflict of evidence as to whether the contents of the substituted sheet were identical with those of the old one and whether or not there was a material alteration. But the court held the articles not to be binding upon F., and that the articles and memorandum must be taken together as constituting one instrument, and F. was not a contributory. Turner, L.J., in his judgment, at p. 465, observed that no case had decided that an entire sheet of a deed might be removed after execution and a new sheet substituted without the whole deed being thereby vitiated: and he himself was by no means satisfied that the alteration which had been made in these articles was not, on this basis, sufficient of itself to vitiate them, regardless of the question whether their effect was or was not thereby altered. As to the consequence of an alteration in a memorandum of association after signature but before registration, see *In re Barned's Banking Company: Peel's Case*, 2 Ch. 674. The decision in *Re The English, etc., Rolling Stock Company: Lyon's Case*, 35 Beav. 646, was, on the other hand, concerned with an alteration of the articles after an application for shares in the company though before their allotment. The alteration in this case consisted of a cancellation of the articles and the execution of new ones: it had been made in accordance with the statutory requirements and the new articles did not enable the company to carry on a trade separate and distinct from that specified in the prospectus as the company's object, and that being so, the Master of the Rolls held that no alteration in substance had thereby been effected, and the allotment had not been invalidated by it.

It appears from words used by Neville, J., in *In re Australian Estates and Mortgage Company Limited* [1910] 1 Ch. 414, that a company may lawfully make a conditional alteration in its articles. There the resolution in question was a special resolution for the reduction of the company's capital, and the latter portion of it provided for extinguishing the rights attaching to the preference shares and there ranking *pari passu* with the ordinary shares; but this extinction and consolidation was to become operative only if the court gave its sanction to the reduction of capital. Neville, J., remarked (at p. 425) that he saw no reason why such a resolution should not be made dependent upon the confirmation by the court of the capital reduction resolved upon in the first place, so that, if the court refused its sanction, the conditional resolution would fall to the ground. "I know," he said, "of no limitation in the powers of a company which prevents them passing a resolution in a conditional form of that kind": and there seems no good objection to the applicability of the principle which emerges from this case to an ordinary special resolution for the alteration of articles.

Thus far we have considered the various decisions concerning the statutory regulations that govern the subject of our inquiry, and this portion of it would not be complete without some brief reference to the curious case of *Ho Tung* v. *Man On Insurance Company, Ltd.* [1902] A.C. 232, which decided that, although a special resolution is the statutory mode of enacting articles, their adoption by a company may be proved by a long course of acquiescence. The facts were that the unsigned articles of the company incorporated under Hong Kong Ordinance I of 1865 (which was similar to our 1862 Act) were irregularly registered along with its memorandum: but for a period of nineteen years they had been published, acted on without objection, and from time to time amended and added to by special resolutions. The Privy Council came to the conclusion that, by the acquiescence and agreement of the shareholders shown by this long course of dealing, the registered articles had become and were the company's articles as surely as if they had been adopted by special resolution: and they were therefore to be treated as valid and operative and as having been adopted by the shareholders. The decision must not be taken as an incentive to adopt new or alter existing articles in an irregular manner in the pious hope that the passing of time may cure the defect: but it is interesting as an illustration of a very unusual and exceptional state of affairs.

One very important rule that concerns the alteration of articles is that the provisions in the articles which regulate the matter are always subordinate to the provisions contained in the Act. The statement may seem too obvious to deserve mention, but from time to time attempts have been made to deprive a company of the power of alteration of its articles which has been conferred upon it by the Act for the time being in force: and the importance of the rule cannot be overemphasised. In *Walker* v. *London Tramways Company*, 12 Ch. D. 705, it was decided that a company cannot contract itself out of the provisions of s. 50 of the 1862 Act (dealing with the question of alteration of the articles) by a clause in its articles excepting any regulation contained in the articles from the operation of the section, and a resolution of the company in general meeting to alter or modify such regulation will be valid. The judgment of Jessel, M.R., is very short and it contains no reasons for arriving at that conclusion. Two other cases where the question occurred are *Malleson* v. *National Insurance & Guarantee Corporation* [1894] 1 Ch. 200, and the well-known case of *Allen* v. *Gold Reefs of West Africa, Ltd.* [1900] 1 Ch. 656: both of these decisions are somewhat involved, and, as there is insufficient space to deal with them here, I give them for reference purposes for those of my readers who are able to study them in connection with this particular point. However, the facts in *Ayre* v. *Skelsey's Adamant Cement Co., Ltd.*, 20 T.L.R. 587, were, shortly, that by cl. 4 of the company's articles it was provided that certain articles, dealing with the capital of the company, should not be altered, excluded, or added to, nor should the capital of the company be increased or reduced or any shares issued with any preference, priority, or special advantage, nor should any regulation or resolution be made or passed restricting or interfering with the powers and discretion of the directors or removing any directors except by a resolution passed by a majority of the members present personally or by proxy at a general meeting of shareholders duly convened, and which majority should hold not less than four-fifths of the capital of the company for the time being. Subsequently, the company in general meeting passed and confirmed (as the then (1862) Act required) a special resolution increasing the company's capital and attaching certain special rights and privileges to the new shares thus created: but the majority that passed and confirmed this resolution was not one holding four-fifths of the capital, as was required by cl. 4 of the company's articles. Kekewich, J., had to consider the validity of cl. 4, and he observed, at p. 589, in the course of his judgment, that these companies were creatures of statute with statutory powers and subject to statutory restrictions, and any regulations which attempted to evade the provisions of the statute must be invalid. Therefore, if there was, in the articles of the company, a regulation that the capital of the company should not be increased except by a certain majority, and the statute provided that the capital might be increased in a different way, then the statute prevailed, and no effect could be given to the article. That, he said, appeared from *Allen* v. *Gold Reefs of West Africa, Ltd.*, *supra*, and *In re Peveril Gold Mines, Ltd.* [1898] 1 Ch. 122. This latter case decided that the right given by s. 82 of the 1862 Act to a contributory to petition for the winding up of the company cannot be excluded or limited by the articles of association of the company; and this decision was affirmed by the Court of Appeal, as also was that of Kekewich, J., in *Ayre* v. *Skelsey's Adamant Cement Co., Ltd.*, *supra*.

Sir Kenneth Hagar Kemp, C.B.E., 12th Baronet, of Pentlow, Sheringham, barrister and banker, left estate of the gross value of £9,779 (unsettled), with net personalty £3,430. He left the Advowson and perpetual right of presentation of the rectory and Parish Church of Gissing, Norfolk, to the Clergy Orphan Corporation.

A Conveyancer's Diary.

Distinction between Warranty and Misrepresentation. Liability of Company for Misrepresentation of Agents.

A CASE of some interest in connection with contracts for sale of land is *London County Freehold and Leasehold Properties Ltd.* v. *Berkeley Property and Investment Co. Ltd.* (1936), 2 All. E.R. 1039.

From the headnote to the case it appears that upon a draft agreement for the sale of certain blocks of flats the intending purchasers asked "Are all the tenants' rents paid punctually and without dispute?" Reply was made upon the draft under the signature of one D, the managing director and solicitor of the vendor company: "There are no disputes and rents are paid promptly with very few immaterial exceptions." The reply had in fact been made by R, managing conveyancing clerk to D, in his professional capacity, on information obtained from A, the property manager to the vendors. The representation as to the punctuality of the payment of rents was not incorporated in the agreement for sale, which was duly completed. In a number of cases the rents had not been punctually paid. The purchasers brought an action for damages for fraudulent misrepresentation, or alternatively for breach of warranty.

Goddard, J., held that there had been no fraudulent misrepresentation, but that there had been a breach of warranty and gave judgment for the plaintiffs, to whom he awarded a substantial sum as damages.

The learned judge held as a fact that in eleven cases the rents were not paid punctually and that those eleven cases amounted to more than "very few immaterial exceptions," and consequently the representation made by D was untrue and misleading, and further that the plaintiffs acted upon the faith of such representations.

The defendants appealed, and there was a cross-appeal by the plaintiffs with regard to the finding that there had been no fraudulent misrepresentation.

The Court of Appeal reversed the judgment of Goddard, J., on both points.

First, with regard to the warranty point.

Now it is established that a warranty is a contract which is not part of the substantive contract, but independent if a collateral to it, and so, in order to succeed on that point, the plaintiffs had to show that there was such a collateral contract entered into between the parties. Thus, in *Dawsons, Ltd.* v. *Bonnin* [1922] 2 A.C. 413, at p. 422, Viscount Haldane said with regard to the word warranty: "The proper significance of the word in the law of England is an agreement which refers to the subject-matter of a contract, but, not being an essential part of the contract either intrinsically or by agreement, is collateral to the main purpose of such a contract." Lord Haldane then went on to discuss the loose way in which the word "warranty" had often been used (e.g., where the words relied on as a warranty in fact amounted to a condition), but I am not concerned with that for the present purpose.

Again, in *Heilbut Symons & Co.* v. *Buckleton* [1913] A.C. 30, the requisites for a warranty were considered in the House of Lords.

In that case the facts were that the plaintiff asked the local manager of a firm of rubber merchants, who had underwritten a large number of shares in a rubber and produce company then in course of formation, whether his firm were bringing out a rubber company. He replied that they were. The plaintiff then asked whether the company was all right. The manager replied that his firm were bringing it out, to which the plaintiff rejoined that that was good enough for him. The statements of the manager were repeated in letters addressed to the plaintiff. The plaintiff agreed to take shares in the company, and the defendants agreed to procure an allotment of shares to him, which was done. The shares afterwards fell in the market. The plaintiff brought an action for alleged fraudulent misrepresentation and for breach of warranty, the alleged warranty being that the company was a rubber company. The jury found that there was no fraudulent misrepresentation, but that the company could not be properly described as a rubber company and that the manager had given a warranty as alleged.

Judgment was given for the plaintiff in the Court of First Instance on the grounds that there was a warranty and that was affirmed by the Court of Appeal. The House of Lords reversed the judgment.

The question of fraudulent misrepresentation having been disposed of by the finding of the jury, the only point at issue when the case came to the Court of Appeal and afterwards to the House of Lords was whether there was a warranty or not.

Viscount Haldane, L.C., in his judgment, referred to the representation that the company in question was a rubber company made by the agent of the defendants and said: "No doubt this representation formed part of the inducement to enter into the contract to take shares which was made immediately afterwards and was embodied in two letters. . . . But neither in those letters nor in the conversation itself are there words either expressing or, in my opinion, implying, a special contract of warranty collateral to the main contract, which was one to procure allotment. It is contrary to the general policy of the law of England to presume the making of such a collateral contract in the absence of language expressing or implying it, and I think that the learned judge who tried the case ought to have informed the jury that on the issue of warranty there was no case to go to it and that on this issue he and the Court of Appeal ought to have given judgment for the appellants.

Applying those principles to the instant case it seems quite clear that there was no contract of warranty. Slesser, L.J., in the course of his judgment, said in reference to that point: "In my opinion the learned judge was wrong in finding such a collateral contract in the present case for the reason that there is no evidence that the parties ever entered or intended to enter into a collateral contract at all, or indeed any contract other than the direct agreement for the purchase and sale of the properties, and the answer as to punctuality of rent was in my view never more than a representation made in the course of negotiations on that contract of purchase and sale."

There remains the question of fraudulent misrepresentation. In fact it was found that the representation that "the rents had been promptly paid with very few immaterial exceptions" was untrue. But the learned judge in the court below decided that there was no fraud on the ground that the managing director and solicitor to the company (through his managing clerk) had made the representation quite innocently, relying on information given to him by the property manager or his subordinates.

In *S. Pearson & Son Ltd.* v. *Dublin Corporation* [1907] A.C. 351, Lord Loreburn, L.C., said: "The principal and agent are one, and it does not signify which of them made the incriminated statement or which of them possessed the guilty knowledge."

Romer, L.J., in the course of his judgment said: "Being a corporation they" (the defendants) "could of course have no actual knowledge at all, but they must be deemed to have had the knowledge of their agents who normally dealt with questions arising between them and their tenants and the true facts of the case must have been known to one or more of those agents." So although the representations in question were innocently made by the person who actually made them, yet as they were untrue to the knowledge of other agents of the company who had supplied the information upon the faith of which the representations were made, the defendant company was held liable.

Landlord and Tenant Notebook.

Forfeiture: Lease Void or Voidable?—I.

I HAVE been asked by someone who violently objects to legislative interference with freedom of contract to consider whether it is not possible for landlord and tenant to make an agreement entitling the former to eject the latter on failure to observe any of the other terms of the lease. The maker of the request (who, incidentally, appeared unaware of the fact that this particular kind of interference was judicial long before it was legislative) seemed to have in mind some such provision for automatic determination as is contained in all the best (from the owner's point of view) hire-purchase agreements now in use.

The task of adapting such a provision to the requirements of a lease with any hope of success is a formidable one. There was a time when learned writers drew a sharp distinction between a provision conferring on the landlord the right to determine the lease in certain events and a provision by which on the happening of such events the lease should be void. But a long series of decisions has made manifest the tendency to construe the latter type of provision as one conferring an option only, so that unless the event be within sub-ss. (8) or (9) of L.P.A., 1925, s. 146, notice must be served. Nevertheless, it may be worth while to examine some of the leading cases with a view to ascertaining how these interpretations have been reasoned out.

The first two authorities which I shall take show that a contrary view would not also suit the landlord. In *Rede* v. *Farr* (1817), 6 M. & S. 123, the landlord sued for debt on a bond securing rent, and it was the defendant who invoked a clause which ran: "If the said yearly rent . . . or any part thereof shall be unpaid for the space of forty days next after . . . then this demise, and every article, clause and thing herein contained shall cease, determine, and be utterly void to all intents and purposes, anything herein contained to the contrary thereof in any wise notwithstanding." Which plea was rejected by Ellenborough, C.J., as being "contrary to an universal principle of law that a party shall never take advantage of his own wrong." In *Reed* v. *Parsons* (1817), 2 Chit. 247, the position and the result were much the same.

A decision much quoted in subsequent cases was that of *Doe d. Bryan* v. *Bancks* (1821), 4 B. & Ald. 401. While the action was, of course, a landlord's claim for ejectment, the defendant holding under a mining lease, had occasion to question the existence of the relationship by reference to a provision: "if the works should stop or cease working at any time within two years, this lease shall be deemed void to all intents and purposes" (the suggestion being that subsequent payment of rent had brought into being a tenancy from year to year). But it was held that the cessation did not make the lease absolutely void unless the landlord so chose; notwithstanding the language of the clause, its legal effect was not to make the lease voidable only; and, at any rate, it did not lie in the mouth of the lessee, etc.

This authority has been much followed and relied upon, though within a few years of the decision its correctness was doubted by Lord Eldon, L.C., when trying an appeal in *Dakin* v. *Cope* (1826), 2 Russ. 170. That was a claim by intending assignor against intending assignee of a lease of licensed premises, and I think it is fair to say that the real dispute was as to who should pay certain outgoings, the objection that the combined effect of defaults by the vendor and a forfeiture clause was that he had no lease, being merely a makeweight (the landlord had expressly waived any breaches). The clause provided that if rent were in arrear and there was no sufficient distress, or if the tenant neglected or failed in the performance of his covenants, "then and from thenceforth the present demise or lease and the covenant for quiet enjoyment thereinafter contained shall wholly cease and be void, and J.B. and T.H., etc. [the lessors] shall or lawfully may enter," etc. It will be observed that this provision makes a special reference to a landlord's obligation, namely, that of the covenant for quiet enjoyment, and that the words dealing with avoidance are immediately followed by words relating to a right of re-entry; hence it is not surprising that if the authority of *Doe* v. *Bancks* was doubted, in this case the forfeiture clause was construed as conferring an option which the landlord need not exercise.

Arnsby v. *Woodward* (1827), 6 B. & C. 519, was another case between vendor and purchaser, the action being for the return of a deposit and damages representing the costs of an undefended action of ejectment brought against the plaintiff. Here again a provision by which in the event of rent being in arrear or any covenant broken the term granted, or so much thereof as should be unexpired, should cease and determine, and it should be lawful for the landlord to re-enter. Rent had been paid and accepted since the default relied on; this and the presence of the words "it shall be lawful . . . to re-enter" were factors in the decision that the clause gave an option only.

In *Doe d. Nash* v. *Birch* (1836), 1 M. & W. 402, a similar provision, both making the lease null and void and creating a right to re-enter (on failure to erect a shop front within three months), came into discussion, but the point was shortly disposed of as determined by authority.

A different kind of proceeding raised the point again in *Bowser* v. *Colby* (1841), 1 Hare 109. This was an application for relief against forfeiture, opposed by the landlord on the ground that relief could not be granted because the lease had automatically ceased to exist. The forfeiture clause said that it should be lawful for the landlord to re-enter and re-possess, and the lease should be forfeited and the term cease. The argument was that there were two contracts; by the one the landlord was given an option, which equity might restrain him from exercising; but the other effected a destruction of the estate granted, which no judge could prevent or cure. This reasoning did not appeal to Wigram, V.-C., who construed the provision as meaning that the landlord might, on breach of the condition, determine the lease either with or without re-entering, but that non-payment of rent was not of itself to put an end to the relationship. It was merely the case that different acts were to have the same effect; indeed, the words of the clause "the lease shall be forfeited and the same cease" did no more than the law itself would imply if they were not found.

The matter came before the Privy Council in *Davenport* v. *The Queen* (1877), 3 A.C. 115. A Crown lease granted under a Queensland Act incorporated a provision "if any person selecting lands shall fail to occupy and improve the same as required by . . . then the right and interest of such selector shall cease and determine." The tenant had so failed, but the Government officials had decided "not to enforce the forfeiture" at the time, and had accepted rent since due. Possession was now sought. The judgments made much reference to "the universal principle" applied in the first two cases mentioned in this article, by which no man may take advantage of his own wrong—not because the tenant was trying to escape obligations in this case, but as a means to ascertaining the true meaning of the provision. It was reasoned that if the plaintiff were right in his contention, it would have meant that the tenant could have put an end to the lease by breaking his covenants at any time; this cannot have been the intention of the parties; the provision created an option only. But, as Sir Montague Smith said in the course of his judgment:—

> "There is no doubt that the scope or purpose of a contract may be so opposed to this rule of construction that it ought not to prevail, but the intention to exclude it should be clearly established."

In fine, what the enquirer referred to in my opening sentence wants is an instrument which will clearly establish that intention. The possibilities will be gone into in next week's "Notebook."

Our County Court Letter.

WALKING POSSESSION AND POUND BREACH.

A STATUTE may be ancient without being obsolete, as shown by the recent case of *Billingham* v. *Round & Son*, at Stourbridge County Court. The plaintiff claimed £12, being treble damages under the Distress for Rent Act, 1690, as landlord of a house, No. 5, New Estate, Lyde Green. The tenants, who were not parties to the action, had fallen into arrears with their rent to the extent of £7 5s., and a distraint was accordingly levied upon a wireless set. The plaintiff's bailiff had entered this in an inventory, which he handed to the tenants, who agreed that there should be "walking possession" on the usual terms. The bailiff therefore did not remain continuously on the premises, and, in his absence, the defendants' servants removed the wireless set, on the ground that it was only on hire-purchase and that the defendants were therefore still the owners. The evidence was that the inventory (on blue paper) had been shown to the defendants' servants, who alleged that the bailiff had given them permission to remove it. This was denied by the plaintiff, whose case was that the above facts constituted a pound breach, for which he was entitled to treble damages. The value of the wireless set was £3, and £1 was claimed as general damages, viz., a total of £4. The defendants' case was that the wireless set had already been removed from other premises, and was eventually traced to the house of the plaintiff's tenants. Under the terms of the hiring agreement, the change of address should have been notified, and the defendants believed they were entitled to resume possession of the set. His Honour Judge Roope Reeve, K.C., observed that the defendants had no malevolent intention, and the only damage was the legal harm. There had been an interference with the course of justice, however, as goods had been removed from the custody of the law. Judgment was therefore given for £9 for pound breach, and 3s. general damages (viz., treble that actually suffered) with costs on Scale B.

The fact that there was no man in possession was therefore no obstacle to the recovery of damages, and in this respect the above judgment was in accordance with *Jones* v. *Bierustein* [1900] 1 Q.B. 100. The plaintiff had distrained for rent, but his bailiff, after being in possession from a Wednesday to a Saturday, had then left the premises until the following Monday. During the week-end, the defendant removed some of the goods, of which he was the true owner. The plaintiff claimed damages for pound breach, and the county court judge held that the goods had been impounded within the Distress for Rent Act, 1737, but that real (as opposed to constructive) possession was necessary. Judgment was accordingly given for the defendant, but this was reversed by the Divisional Court, on the ground that there had been no abandonment of the distress. This decision was upheld by the Court of Appeal, and Lord Justice A. L. Smith held that it was not requisite that someone should be left in possession of the goods. Lords Justices Collins and Vaughan Williams agreed, and judgment was therefore entered for the plaintiff with costs. It is to be noted that the Act of 1690 provided also for treble costs, but this right was taken away by the Limitation of Actions and Costs Act, 1842, under which only ordinary costs are recoverable. The treble damages are recoverable, however, without proof of special damage, as held in *Kemp* v. *Christmas* (1898), 79 L.T. 233. The court must, nevertheless, be satisfied that the figure to be multiplied by three is correct, and in the first-named case, *supra*, the defence conceded that the wireless set was worth £3.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

AWARD OBTAINED BY FRAUD.

IN *Knowles* v. *Elmes*, at Kidderminster County Court, an application was made to set aside or vary an award made on the 10th March, 1936. The evidence on that occasion had been that the respondent, in July, 1935, had sustained a fractured arm, while working as a fruit salesman for the applicant. The respondent had admittedly been injured in the shoulder, during the war, and was in receipt of a 70 per cent. disability pension. His case had been that additional incapacity had arisen, as a result of the accident, inasmuch as he was unable to do the work of a steel erector, e.g., working on girders and fixing bolts, which he had done as recently as March, 1935. Medical evidence had been given in support of his case, but the defence had been that the fractured arm (of July, 1935) was completely cured, that the only incapacity was due to the war wound, and that the alleged additional incapacity was due to malingering. An award had been made, however, in reliance upon the evidence as to the work done, shortly before the accident. On the above application to set aside, evidence was given by eight witnesses (steel erectors, scaffolders, etc.) that the respondent had never done a steel erector's work, but had merely done odd jobs, such as boiling tea for the other men. When asked to do any but a light job, the respondent had always pleaded his war wound as an excuse for not doing it. His Honour Judge Roope Reeve, K.C., held that, although the respondent might have used a spanner occasionally, he was never a steel erector. His previous evidence had been more than exaggeration, and the award had been obtained by fraud, within r. 85 of 1926. The award was therefore set aside, with costs to the applicant.

THE DEFENCE OF DRUNKENNESS.

IN *Jenkins* v. *Sir R. Ropner & Co. Ltd.*, at Liverpool County Court, an award was claimed of 30s. a week in respect of an accident sustained on the 9th September, 1935. The applicant's case was that he was a member of the crew of the s.s. "Otterspool," and, while the ship was at Santa Fe, in the Argentine, he went to call the galley boy. In so doing, the applicant tripped on a metal grating in a passage way, and two of his ribs were thereby fractured. The defendants' case was that the captain saw the applicant, and another member of the crew, rolling round the decks, both very drunk. Deeming it best to say as little as possible, the captain allowed them to go and have a sleep, and did not see the accident. It was therefore submitted that the accident did not arise out of or in the course of employment, and was attributable to the serious and wilful misconduct of the applicant. His Honour Judge Procter held that the applicant, having started on a drunken spree early in the day, did no work afterwards, and refused to lie down when told to do so. Judgment was given for the respondents, with costs.

TUB RIDING IN COAL MINES.

IN *Coombe* v. *John Bowes and Partners Limited*, at South Shields County Court, the applicant's case was that he and his wife and son had been partially dependent upon the earnings of another son, lately deceased. The latter had been a stoneman, employed by the respondents, and had been found suffering from a fractured skull, 8 yards away from a low girder. The deceased had finished his work, and was going out-by, and the spot where he was found was in Busty Drift—an inclined drift leading up from one seam to another. A workmen's mine inspector stated that the deceased might have slipped, and fallen between two tubs, while walking alongside them. The respondents' case, however, was that an impression of a man having sat in soft clay was found in one of the tubs, and it was asking for death to sit in the tubs where the roof was uneven. Liability was therefore denied, on the ground that the death had occurred through a breach of the pit regulations. His Honour Judge Thesiger observed that familiarity might breed forgetfulness, whereby the deceased had taken the opportunity of riding up the steep slope by jumping on the first tub that passed him. The claim therefore failed, and judgment was given for the respondents, with costs.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Increase of Capital.

Q. 3357. A small private company with only six shareholders, of whom three hold nearly 90 per cent. of the capital, owns a substantial amount of freehold property, and until recently carried on a business. It has now ceased to do so and has let the business premises belonging to it for a rent about equal to the average annual profits of the business. There are only two directors, one of whom owns over 30 per cent. of the capital, and the other about 5 per cent. The directors also hold a little less than one-third of the capital as trustees of the Will of a deceased shareholder. It has been suggested that the capital of the company should be increased by 200 shares, which should be allotted on payment of the par value to the two directors in recognition of their successful management of the company. The articles provide that, unless otherwise determined by the directors or by a resolution authorising the increase of capital, all new shares shall be offered to the members in proportion to the number of shares held by them. It is improbable that any objection will be raised, except possibly by one shareholder entitled to less than 4 per cent. of the capital, and we shall be glad to have your opinion whether the proposed increase and allotment can properly be made, even if the shareholder in question objected. It would be possible to carry the necessary resolution by a majority of about eight to one against that shareholder, without either of the directors using their voting power either in respect of their own shares or of those which they hold as trustees, and it is assumed it will be wise that they should not vote on the proposal in either capacity.

A. The proposed increase and allotment can properly be made, even if the shareholder in question objected. Resolutions of a company need not be unanimous, and the domestic tribunal (viz., the company in general meeting) has the deciding voice. In the absence of a fraud on the minority, or some action which is harsh or oppressive, the court will not grant an injunction, or declare the resolution void, at the instance of a dissentient shareholder.

Assent to Devise where Annuity Bequeathed.

Q. 3358. By his will a testator, who died recently, appointed A.B. and C.D. his executors and trustees, and, after bequeathing an annuity and a legacy, left the residue of his estate to A.B. The annuity has been provided for and the legacy has been paid. The greater part of the residue consists of freehold and leasehold properties which A.B. desires to retain. Can such properties be vested in A.B. by a simple assent (such as Precedent No. 1 of Rose's "Conveyancing Precedents," 2nd ed.), but adapted to include recitals clearing off the annuity and the legacy? Is there a better conveyancing method? I assume that the assent or, as is probable, the assents, because each property will probably be dealt with by a separate assent, will not attract any stamp duty.

A. The assent may be a simple one without recitals, and a purchaser (which would include a mortgagee) from A.B. would get a good title. The executors must, of course, be satisfied that the implied charge of the annuity has ceased to have effect, otherwise the assent would have to be a vesting assent, as the will created a settlement under s. 1 of S.L.A., 1925. A memorandum should be endorsed on probate and an acknowledgment given.

Warranty of Soundness of Mare.

Q. 3359. I should like your advice on the following position: A sells a mare to B, with the following memorandum: "Received of Mr. B. £28 for brown mare. Good worker and sound, with one week's trial. (Signed) A." The mare has proved unsound. Do you consider that the warranty was limited to one week or that, on the construction of the above, notice of unsoundness was required to be given within one week? We are contending on B's behalf that there are two contracts under which he can either (*a*) sue on the warranty, or (*b*) could have returned the mare during the first week. Can you help us support our contention by any cases?

A. The warranty was not limited to one week. The buyer, B, could have returned the mare during the first week, without giving any reason. There are two contracts, as suggested, and the fact that B did not return the mare, during the first week, does not prevent him from suing on the warranty. The contentions (*a*) and (*b*) are correct. As the facts are unusual (depending on the precise terms of the memorandum) no cases can be cited in support.

Motorist's Accident Policy.

Q. 3360. A Mr. X holds a private car policy, in which he is described as "the assured," and which provides that the underwriters will "pay or make good to the assured"—

(*a*) All sums which the assured shall become legally liable to pay by way of compensation for—

(i) Bodily injury to any person caused by or arising out of the use of the insured car.

(*b*) The indemnity granted by this section will be extended to any person who is driving the insured car with the assured's knowledge and consent, for which purpose such person shall be deemed to be included in the expression "the assured."

Mr. X went for a ride in his own car, and asked his brother to drive. His brother negligently upset the car and injured Mr. X.

(*a*) Has Mr. X a right of action against his brother for damages for the injuries which he has sustained through the latter's negligence?

(*b*) If the answer to the above question is in the affirmative, has the brother a right to claim indemnity under the policy in question? We take the view that, as the driver is included in the expression "the assured," the fact that he has injured someone who is also described as "the assured," cannot deprive the driver of his right of indemnity.

A. The policy does not, apparently, limit the cover to injuries to third parties, as it specifies injury to "any person." There is no exclusion of passengers, even if the assured himself is a passenger. On the specific points raised—

(*a*) Mr. X has a right of action against his brother for negligence.

(*b*) *Primâ facie* the brother has the right to claim indemnity under the policy. A possible defence is that Mr. X is not covered against injuries to himself. The amount of premium may be some guide as to the extent of the cover, but the wide terms of the policy will make it difficult to sustain such a defence.

Subject to the foregoing, both questions are answered in the affirmative, and the subscriber's view is correct.

To-day and Yesterday.

LEGAL CALENDAR.

3 AUGUST.—Fame is the most erratic of achievements. Almost anyone asked to name an eighteenth century murderer would think first of Eugene Aram. Yet it is hard to say why one indifferent poem should have bestowed immortality on the very sordid crime of the schoolmaster convicted at York on the 3rd August, 1759, and condemned to death. Perhaps it is the fascination of retributive justice overtaking one who fifteen years before had buried the body of the man he killed. Again, perhaps the tragic end of a genuine scholar has lived in popular memory by reason of its strangeness.

4 AUGUST.—On the 4th August, 1554, Sir James Hales, formerly a Justice of the Common Pleas, drowned himself at Thanington.

5 AUGUST.—For all their common sense the Scots are a mystic race. Has the following circumstance recorded as having occurred in a Scottish court on the 5th August, 1834, any parallel in English legal history? Mr. Dalziel, a writer to the signet, in the course of his evidence, said that some papers connected with the case had been mislaid, and, after a very diligent search, all hope of finding them was given up, until the night previous to the trial, when he dreamt that the papers were lying in a particular place. On going to the quarter indicated, he discovered them.

6 AUGUST.—On the 6th August, 1794, Lord Bathurst, formerly Lord Chancellor, died at Oakley Grove. His bust may be seen in the great church at Cirencester. He was eighty years old when he expired, sixteen years after his resignation from the Woolsack. On his retirement, he had refused a pension. He is remembered chiefly as having been the most inefficient Chancellor of the eighteenth century, though personally nothing could be said against him, for in public life he was sincere and honourable, and in private life he was thoroughly amiable.

7 AUGUST.—On the 7th August, 1832, Edward Heath, a chemist, found himself in the dock at Lewes Assizes to answer for the death of George Burdett of Brighton, one of his customers. Two persons had come into his shop, one asking for oil of tar and the other for castor oil. The two liquids looked exactly alike and, somehow or other, after they had been poured out, the respective phials got mixed up, with the result that the gentleman who wanted the castor oil swallowed poison and died. The jury took a lenient view and absolved the chemist of negligence, acquitting him.

8 AUGUST.—A case which caused considerable scandal at the time illustrates the administration of justice in Ireland at the beginning of the eighteenth century. On Saturday, the 5th August, 1809, a man named Barry, confined in Clonmel Gaol, received notice that he was to be tried two days hence in Kilkenny, 25 miles away. His counsel produced an affidavit in court that there were five witnesses in Waterford who could prove his innocence by establishing an alibi. The application to postpone the trial was, however, refused. He was tried on the 8th August. His counsel declared he would not go through the mockery of defending a man who had not an opportunity of producing his witnesses, and quitted the court. The man was found guilty and executed.

9 AUGUST.—On the 9th August, 1842, John McGill and several other persons were tried at the Liverpool Assizes for the abduction of Miss Anne Crellin, a young lady possessed of £4,000 or £5,000. She had been conveyed from Liverpool to Gretna Green in a state of perpetual intoxication, and at the journey's end some sort of marriage ceremony had been performed between her and McGill. She woke up next day in bed with McGill on one side and a female confederate on the other. The bridegroom got eighteen months' imprisonment.

THE WEEK'S PERSONALITY.

In the reign of Edward VI, Sir James Hales, Justice of the Common Pleas, took a prominent part in all the proceedings for the establishment of Protestantism, though on the King's death he firmly refused to have anything to do with the attempt to thrust Lady Jane Grey on to the throne. With equally strict regard for legal rectitude, he declared at the Kent Assizes after the accession of Mary that the laws against nonconformists and Roman Catholics still remained in force. Perhaps it was on this account that when he presented himself in Westminster Hall to take the oath of office, the Lord Chancellor, Bishop Gardiner, refused to administer it. Shortly afterwards he was committed to prison and worried so much by the attempts that were made to induce him to recant his beliefs that he attempted to commit suicide with his penknife, being only saved by the timely return of his servant. Subsequently he was released, but his mind remained troubled, and a few months later he drowned himself in a shallow stream at Thanington. The decision in the case of *Hales* v. *Petit*, in which his widow attempted to resist the forfeiture of his goods on the ground of his *felo-de-se*, is supposed to have inspired part of the grave-diggers' scene in "Hamlet," where the clowns discuss suicide and "crowner's quest law."

DEAD IN HARNESS.

The sudden death of the Recorder of Sunderland in his room at the court there, immediately after he had adjourned a case, adds yet another to the long list of judges who have died in harness. Mr. Justice Wightman died suddenly in the night while he was holding the Assizes at York. All day he had sat trying a long and complicated case, and the vigour and lucidity of his summing up (he was then seventy-eight) had excited the admiration of all present. Equally sudden was the end of Mr. Justice Watkin Williams at the Nottingham Assizes. Lord Tenterden, C.J., was seized by his last illness during the third day of the trial of the Mayor of Bristol for misconduct during the reform riots in that city. Mr. Baron Watson was charging the Grand Jury at Welshpool, when he collapsed, and Mr. Justice Talfourd's death at Stafford has been made unforgettable by the late Lord Darling's vivid verses which end:—

> "Gone to its God is the soul and borne back a corpse to the Lodgings;
> Naked the one as it came, robed the rest in the scarlet and ermine."

A WRITING LESSON.

During a case at the Manchester Assizes recently, Mr. Justice Atkinson asked a handwriting expert, who claimed that he could reproduce anything, whether he could become an expert forger. The reply was an offer to write the judge's signature immediately. Handwriting experts are not often as enterprising as that, though they are always sure of themselves. The suggested demonstration recalls another occasion when the positions were reversed. The future Mr. Justice Hawkins was cross-examining Mr. Netherfield, one of the most famous of all handwriting experts. He gave him six slips of paper, each written in a different kind of handwriting. The great expert examined them carefully for a considerable time, observing: "I see, Mr. Hawkins, what you are going to try to do. You want to put me in a hole." When he was asked were those pieces of paper written by one hand about the same time, he replied that they were certainly written at different times by different persons. Then Hawkins triumphed. "I wrote them myself this morning at my desk," he said.

Reviews.

Fraser on Libel and Slander. Seventh Edition, 1936. By Gerald Osborne Slade, M.A., of the Middle Temple, Barrister-at-Law, and Neville Faulks, M.A., LL.B., of the Inner Temple, Barrister-at-Law. Royal 8vo. pp. lxi and (with Index) 407. London: Butterworth & Co. (Publishers), Ltd. 35s. net.

"Fraser" to the several generations of law students represented in the legal profession to-day stands out unassailable and unassailed as the authoritative work on libel and slander. It first saw the light in 1893, and the modest little volume which then appeared was prefaced by a hope that "considering the large and increasing number of actions of this kind with which the courts were occupied" it might prove useful to the profession. Five subsequent editions have since then run their course and now appears the seventh. It is interesting to note that Mr. G. O. Slade, the learned joint author of this edition, finds that "the uncertainty arising from the present complicated state of the law, and the disproportionate penalties which juries are so prone to inflict upon an unfortunate defendant" is so serious as to merit special reference in his preface. We entirely agree with this comment and look forward to the time when this department of legal procedure will receive attention at the hands of the Legislature. Meanwhile it is pleasant to be able to observe that the volume before us maintains the high standard of its predecessors and deals as fully as could be expected with all the complexities of law and practice up to the time of publication. The appearance of the Law Reform (Married Women and Tortfeasors) Act, 1935, and the extensive amendments of Supreme Court Rules consequent thereon have necessitated considerable revision, which has been carried out with care and completeness.

Books Received.

The County Court Rules, 1936. Royal 8vo. pp. 375. London: H.M. Stationery Office. 10s. 6d. net.

Report of the Quarter Sessions Committee. London: H.M. Stationery Office. 3d. net.

Investment in Property. By Ronald B. Sunnucks, F.A.I.P.A., F.C.I.A. Second Edition. 1935. Crown 8vo. pp. 69. London: The Banbury Publishing Co. 1s. net.

Typewriting in Legal Offices. By Winifred Hynds, F.I.P.S. (Hons.), A.C.T.S. 1936. Demy 4to. pp. 103. London: Sir Isaac Pitman & Sons, Ltd. 5s. net.

Conveyancing, Land Registry and Probate and Administration Costs. By A. Geo. Calton. Second Edition. 1936. Demy 8vo. pp. (with Index) 144. London: Stevens & Sons, Ltd. 7s. 6d. net.

Pitman's Commercial Law. By J. A. Slater, B.A., LL.B. Eleventh Edition. 1936. By R. H. Code Holland, B.A., of the Middle Temple, Barrister-at-Law. Crown 8vo. pp. xii and (with Index) 282. London: Sir Isaac Pitman and Sons, Ltd. 3s. 6d. net.

Building Societies Year Book, 1936. Compiled and edited by George E. Franey, O.B.E. Demy 8vo. pp. 501. London: Franey & Co., Ltd. 7s. 6d. net.

The Law of Arbitration in Scotland. By David Alexander Guild, M.A., LL.B., Sheriff-Substitute of Lanarkshire at Airdrie. Royal 8vo. pp. xv and (with Index) 148. Edinburgh: W. Green & Son, Ltd. 18s. net.

Rights of Way. By Wm. Marshall Freeman, of the Middle Temple, Barrister-at-Law, Recorder of Stamford. Second Edition. 1936. Demy 8vo. pp. xix and (with Index) 115. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

Mews' Digest of English Case Law. Quarterly Issue, July, 1936. By G. T. Whitfield Hayes, Barrister-at-Law. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Obituary.

LORD TREVETHIN.

Alfred Tristram Baron Trevethin, a former Lord Chief Justice of England, died near Builth Wells, Breconshire, on Monday, 3rd August, at the age of ninety-two. He was educated at Mill Hill School and Trinity Hall, Cambridge, and was called to the Bar by the Middle Temple in 1869. He was made Junior Counsel to the Admiralty in 1882, and in 1885 he became Recorder of Windsor. He took silk in 1897. In 1904 he was raised to the Bench, and in 1921 he was appointed to the office of Lord Chief Justice of England. He resigned in 1922. An appreciation appears at p. 624.

Mr. W. K. BAXTER.

Mr. William Kaye Baxter, solicitor, senior partner in the firm of Messrs. W. K. Baxter & Son, of Huddersfield, died recently at the age of seventy-five. Mr. Baxter was admitted a solicitor in 1886. For a number of years he represented South Crosland on the old Huddersfield Board of Guardians.

Mr. H. H. JACKSON.

Mr. Harold Heywood Jackson, LL.M., solicitor, a partner in the firms of Messrs. Price, Johnson & Jackson, of Wigan, and Messrs. H. H. Jackson & Duncan, of Southport, died on Sunday, 26th July, at the age of fifty-one. Mr. Jackson was admitted a solicitor in 1909.

Mr. A. L. JONES.

Mr. Alfred Lewis Jones, solicitor, of Rhyl, died on Thursday, 30th July, at the age of seventy-two. Mr. Jones was admitted a solicitor in 1887. He was County Court Registrar for Rhyl, Holywell and Flint.

Mr. T. B. R. WILSON.

Mr. Thomas Bishop Ridley Wilson, solicitor, a partner in the firm of Messrs. Davis, Lloyds & Wilson, of Newport, Mon., died recently at the age of seventy-eight. He was admitted a solicitor in 1882. Mr. Wilson was Diocesan Registrar for Monmouth.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

Mode of Addressing Firm of Solicitors.

Sir,—Will you tell your readers how a firm of solicitors consisting of male and female partners should be addressed?

Ernest I. Watson.

Norwich.
27th July.

[Whilst no doubt such firms are hardly likely to be very seriously affronted if the customary expression "Messrs." be adhered to, it may become necessary in the near future to consider the use of some such expression as "Monsieuret-dame" or "Messieursetdames" or other permutations and/or combinations of these expressions. What will be the solution for a firm which consists solely of partners of the fairer sex we leave to the ingenuity of those of our readers who are more familiar with the niceties of commercial courtesy than ourselves.—Ed., *Sol. J.*]

Notes of Cases.

Court of Appeal.

Gerard *v.* Worth of Paris Ltd.

Slesser and Romer, L.JJ. 29th June, 1936.

GARNISHEE — JUDGMENT AGAINST COMPANY — MEMBERS' VOLUNTARY WINDING UP—GARNISHEE ORDER—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), s. 174.

Appeal from a decision of Hilbery, J.

In February, 1936, the defendant company passed a resolution for a members' voluntary winding up, a liquidator being appointed. Subsequently, the plaintiff, an employee, was dismissed, and having brought an action, recovered damages for wrongful dismissal. To recover the amount of the judgment debt, she applied for a garnishee order to garnish the moneys in the account of the liquidator. Hilbery, J., made the garnishee order absolute.

SLESSER, L.J., dismissing the liquidator's appeal, said that in a members' voluntary winding up, the majority of the directors of the company had to pass a declaration that the company was solvent. Here there was no reason to suppose that it was not solvent, and no mention of any creditors but the plaintiff. As to the garnishee proceedings, if all other requirements were satisfied and the plaintiff was entitled to an order in respect of the company's account, the mere fact that it stood in the liquidator's name did not make any difference to her rights. As the company was not being wound up by the court, s. 174 of the Companies Act, 1929, had no application. It should be noted that though the company had not applied for a stay in the proceedings under s. 172 of the Act, the court might properly deal with the proceedings as if an application had been made: *In re Bank of Hindustan, China & Japan*, L.R. 5 Eq. 69. But this was a case where the court in its discretion might properly refuse to grant a stay (see *Anglo-Baltic & Mediterranean Bank* v. *Barber & Co.* [1924] 2 K.B. 410, at pp. 417, 420). This was not a case which might produce mischief if a stay were not granted, since the company was solvent and the plaintiff could not obtain any advantage over other creditors. She was entitled in the ordinary course to enforce the judgment by garnishee proceedings.

ROMER, L.J., agreed.

COUNSEL: *C. N. Tindale Davis; Aygherinos; K. Preedy.*

SOLICITORS: *Thompson, Quarrell & Co.; T. Magnus Weihsler; John Carnegie & Moseley.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Toller *v.* Law Accident Insurance Society Ltd.

Greene and Scott, L.JJ. 22nd and 29th June, 1936.

INSURANCE—MOTOR CAR—PROPOSAL FORM SIGNED—COVER NOTES—ACCIDENT—ACTION BY ASSURED—DENIAL OF EXISTENCE OF POLICY—WHETHER INSURER ENTITLED TO RELY ON ARBITRATION CLAUSE.

Appeal from a decision of Hilbery, J.

On the 15th August, 1935, the plaintiff signed a proposal form for the insurance of a motor car with the defendant company, but did not immediately pay the premium. The defendants issued to him three cover notes granting him indemnity "in the terms of the society's usual form of comprehensive policy," the last of these extending to the 29th September. Those terms included a provision for referring to arbitration "all differences arising out of this policy." On the 2nd October the plaintiff, while driving the motor car, was involved in an accident by reason of which he incurred liabilities. The plaintiff having paid the premium, the company, on the 15th November, issued a policy granting cover from the 29th October, 1935, to the 15th August, 1936. In this action the plaintiff sought a declaration that a binding contract of insurance existed between himself and the defendants at the date of the accident, and an order directing them to issue a full comprehensive policy for one year from the 15th August, 1935. He also claimed damages for breach of contract. The defendants denied the existence of the contract on the relevant date, and further, on their application, Hilbery, J., stayed the proceedings, holding that the matter fell within the arbitration clause.

GREENE, L.J., allowing the plaintiff's appeal, said that the issue between the parties was the existence of the contract. If the defendants were right, there was at the relevant time no contract at all. If the arbitrator so found, he would be deciding that the very arbitration clause which founded his jurisdiction had never existed (see *Stevens & Sons* v. *Timber and General Mutual Accident Insurance Association Ltd.*, 102 L.J., K.B. 337, at p. 344). This case was different from one where a defendant, while admitting the existence of a contract, was relying on some clause in it to escape liability. *Golding* v. *London & Edinburgh Insurance Co.*, 43 Lloyd's List Rep. 487, was such a case. The defendants there were relying on a clause in the contract to escape liability, and in this sense only did they "repudiate" the contract. "Repudiation" did not seem an apt word to use, for you did not "repudiate" a contract if you relied on one of its terms. The plaintiff's claim under the policy which he said should have been issued to him, and his alternative claim for damages, came logically at a later stage of the action. The first question was whether there was a contract. If that question were answered in the plaintiff's favour and he made his claim, it might be that the arbitration clause would then be enforceable against him.

SCOTT, L.J., agreed.

COUNSEL: *F. Tucker*, K.C., and *Anningson; Soskice.*

SOLICITORS: *Saunders, Sobell, Greenburg & Co.; L. Bingham & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Williams *v.* Hughes.

Lord Hewart, C.J., du Parcq and Goddard, JJ. 26th March, 1936.

AGRICULTURAL WAGES—MINIMUM RATE—LODGINGS OFFERED BY EMPLOYER TO EMPLOYEE BUT NOT ACCEPTED—WHETHER VALUE OF LODGINGS A BENEFIT WHICH MAY BE RECKONED AS PAYMENT OF WAGES—AGRICULTURAL WAGES (REGULATION) ACT, 1924 (14 & 15 Geo. 5, c. 37), s. 7 (11).

Case stated by Caernarvon justices.

By s. 7 (11) of the Agricultural Wages (Regulation) Act, 1924, subject as provided in the Act, the court may, in any proceedings under the Act, reckon as a payment of wages such amount as in the opinion of the court represents the value of any benefits or advantages received by a worker under the terms of his employment. The respondent, a farmer, in calculating the wages which he was paying to one of his workmen, took into account the value of lodgings which he made available to the man, who, however, preferred to sleep at his home, which was a short distance away. An information having been preferred against the respondent for that he paid wages to the worker at a rate less than the prescribed minimum rate, the justices convicted the respondent, and the question then arose what arrears should be payable. If the respondent was entitled to take the value of the lodgings into account the arrears due were £1 4s.; if he was not so entitled, the arrears payable were £14 4s. It was held by the justices that the respondent was entitled to take into consideration, as a benefit within the meaning of the Act, the value of the lodgings which he made available to the workman.

LORD HEWART, C.J., said that, in his opinion, it was clear from s. 7 (11) of the Act of 1924 that the value of the benefit represented by the lodgings was not to be taken into account unless it were received. The worker had not chosen to avail

himself of the respondent's offer of lodgings, and the benefit of them had accordingly not been received. The mere fact that the lodging was open to the workman, if he had wished to avail himself of it, was immaterial. He (his lordship) refrained from adding more. The appeal must clearly be allowed, and the case must go back to the justices with a direction that the full amount of the wages, not diminished by the supposed value of the lodgings, must be paid.

DU PARCQ and GODDARD, JJ., agreed.

COUNSEL: *H. Hull*, for the appellant: there was no appearance by or on behalf of the respondent.

SOLICITOR: *The Official Solicitor to the Ministry of Agriculture and Fisheries.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Hughes (Inspector of Taxes) *v.* Bank of New Zealand.

Lawrence, J. 1st May, 1936.

REVENUE—INCOME TAX—BANK NOT RESIDENT IN UNITED KINGDOM—SECURITIES HELD BY—INTEREST ON BROUGHT IN AS PART OF BANK'S TRADING PROFITS—EXEMPTION FROM TAX—WHETHER APPLICABLE—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 46; Sched. C, r. 2 (*d*); Sched. D, Miscellaneous Rules, r. 7 (2).

Appeal, by case stated, from a decision of the special commissioners of Income Tax, allowing an appeal by the Bank of New Zealand against assessments to income tax under Sched. D, case I, of the Income Tax Act, 1918, in respect of profits arising from certain investments.

The London branch of the appellant bank held, among their various assets, (*a*) 5 per cent. War Loan; (*b*) Indian Government 3 per cent. Stock; and (*c*) securities of two colonial companies. The interest received by the branch on all that stock was included in the trading receipts in the profit and loss account of the branch. The interest on the War Loan was paid without deduction of tax, and was not assessed to tax under Sched. D, case III, r. 1 (*f*). The interest on the other securities had been taxed by deduction in the ordinary way, but had been repaid to the bank because it was not resident in the United Kingdom. The special commissioners, in allowing the appeal, decided (1) that s. 46 of, and r. 2 (*d*), of Sched. C to the Income Tax Act, 1918, exempted the interest earned on the War Loan and the India Stock from tax, whether that interest was regarded as interest or as a component part of the profits of the bank's business, and (2) that r. 7 (2) of the Miscellaneous Rules of Sched. D applied the provisions of r. 2 (*d*) of Sched. C to dividends paid by foreign and colonial companies, and that the dividends paid to the appellant bank in respect of its shares in the two colonial companies must also be exempt from tax. The Crown appealed.

LAWRENCE, J., said that the Crown contended that s. 46 of the Act of 1918 only exempted interest as such, and that it did not exempt interest if held by a trader and if assessable under Sched. D as one of the component parts of a trade. He (his lordship) thought that there was no foundation for thus construing s. 46, and saying that it exempted only interest held by a person who was not a trader. The section, from its terms, clearly applied not only to War Loan but also to any other loan issued under the same power. The Crown had relied on *Liverpool & London & Globe Insurance Co.* v. *Bennett* [1913] A.C. 610, but that case had, in his (his lordship's) opinion, no application to the present. It was an illustration of the Crown's power to elect between Cases. The second question was whether the special commissioners had been right to hold that the interest on the bank's Indian securities fell within the protection given by r. 2 (*d*) of Sched. C to the Act of 1918. That rule provided that no tax should be chargeable in respect of the interest or dividends on any securities of a foreign state or a British possession which were payable in the United Kingdom, where it was proved that the person owning the securities was not resident in the United Kingdom. It had been argued for the Crown that r. 2 (*d*) took the case of the interest on these Indian securities entirely out of Sched. C, leaving it at large, and that it could then be dealt with under Sched. D as a trading receipt in the hands of a trader. In his (his lordship's) opinion, that interest did fall within Sched. C, and it made no difference whether it were said that r. 2 (*d*) was one of exclusion or of exemption. The intention of the statute must in either case be the same, namely, to exclude that source of revenue from the subject-matter of tax. With regard to the interest on securities in the colonial companies, that question involved the construction of r. 7 of the miscellaneous rules applicable to Sched. D, and whether para. (2) of the rule incorporated r. 2 (*d*) of Sched. C. He (his lordship) thought that it did, in view of the words in r. 7 (2): "all provisions of Sched. C relating to the tax to be assessed and charged in respect of (those) dividends . . . shall extend to the tax to be . . . charged under this rule." The last question was whether, if these various sums of interest were exempt from tax when brought into account as profits or gains under Sched. D, case I, the proportionate amount of expenses incurred for the purpose of earning the exempted profits ought to be excluded for the purpose of calculating the balance of profits. The court had to look at what expenses were expressly allowed. By r. 3 of the rules applicable to Cases I and II of Sched. D, any disbursement wholly or exclusively laid out for the purposes of trade might be deducted. The special commissioners had impliedly found that the expenses which were attributed to the profits earned by the bank in London were exclusively incurred for the purposes of the bank's trade in London. He (his lordship) was of opinion that there was no ground for excluding those expenses merely because part of the profits, to earn which the expenses had been incurred, were exempt from income tax. The appeal must be dismissed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*, for the appellant; *A. M. Latter*, K.C., and *J. S. Scrimgeour*, for the respondents.

SOLICITORS: *Solicitor of Inland Revenue*; *Linklaters & Paines.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

World Transport Company *v.* Tealing & Co.

Hilbery, J. 5th May, 1936.

CARRIER—FOREIGN CONSIGNOR OF GOODS TO ENGLAND—GOODS COLLECTED BY CARRIER AND DELIVERED TO SALESMAN—CARRIER'S CHARGES INVOICED TO SALESMAN—FURTHER CONSIGNMENTS DELIVERED BY CARRIER—WAIVER OF HIS LIEN FOR CHARGES—IMPLIED CONTRACT—LIABILITY OF SALESMAN TO CARRIER.

One, Cabarro, sent certain perishable goods from Spain consigned to himself in London. The plaintiffs, a firm of carriers, incurred certain expenses in respect of the goods abroad, and, on their arrival in London, delivered them to the defendants, a firm of fruit salesmen. The plaintiffs were the only persons having authority to collect the goods in London. The goods delivered to the defendants were sold by them later on the day of delivery. The plaintiffs, having calculated their charges on the first consignment, sent the defendants an invoice in respect of them. It was admitted that it was the usual, although not the universal, practice for transport companies to deliver to salesmen and collect their charges from them, the salesmen subsequently deducting the charges in rendering an account to the suppliers of the goods. The plaintiffs delivered four consignments of goods to the defendants, who knew that the plaintiffs were looking to them for payment of their charges. The plaintiffs having claimed from the defendants the amount of their charges in respect of the various consignments, the defendants refused payment, contending that they were the servants or agents of Cabarro.

HILBERY, J., said that the defendants, having had details of the plaintiffs' account in respect of the first consignment, knew, when they received the other consignments, that the plaintiffs were looking to them for payment. They did not, however, tell the plaintiffs not to look to them (the defendants) for payment. The plaintiffs had a lien on the goods for their charges, and, each time they delivered the goods to the defendants, they were waiving that lien. Since the defendants were aware of the position and had no reason to suppose that Cabarro was paying the plaintiffs' charges, and since they accepted the second, third and fourth deliveries when they had been advised of the plaintiffs' charges in respect of the first, an implied contract arose between the plaintiffs and the defendants, whereby the former waived their lien in consideration of their relying on the latter to pay their charges. He (his lordship) could not accept the contention that the defendants were the agents of a disclosed principal. They were in fact, in his opinion, independent contractors. They were at the most agents to sell and account. The plaintiffs were entitled to judgment for the full amount of their charges.

COUNSEL: *P. Quass*, for the plaintiffs; *B. H. Waddy*, for the defendants.

SOLICITORS: *Ernest G. Scott & Co.*; *W. R. Millar & Sons*, for the defendants.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Wandsworth Licensing Justices.

Lord Hewart, C.J., Humphreys and du Parcq, JJ. 19th May, 1936.

LICENSING—ANNUAL GENERAL LICENSING MEETING—DECISION NOT TO EXTEND PERMITTED HOURS—ADJOURNMENT OF MEETING TO WITHIN ONE DAY OF STATUTORY MAXIMUM PERIOD FOR ADJOURNMENT—FURTHER ADJOURNMENT BEYOND STATUTORY PERIOD FOR PURPOSE OF ASCERTAINING PUBLIC OPINION—HOURS EXTENDED AT SECOND ADJOURNMENT—JURISDICTION—LICENSING (CONSOLIDATION) ACT, 1910) 10 Edw. 7, 1 Geo. 5, c. 24), s. 10.

Rule *nisi* for *certiori* calling on the Wandsworth licensing justices to show cause why an order made by them on the 20th March, 1936, altering the hours for the opening of licensed premises in their area should not be quashed. At the annual general licensing meeting on the 7th February, the justices decided not to alter the permitted hours in the division. The annual general licensing meeting was adjourned until the 6th March (one day within the month after the general annual licensing meeting permitted for adjournments of that meeting by s. 10 of the Licensing (Consolidation) Act, 1910). On the 3rd March, the South West London Licensed Victuallers' Protection Association sent a letter by their solicitors to the clerk to the Wandsworth licensing justices applying to them to advertise and reopen the question of permitted hours on the 6th March on the ground that closing time was later in adjoining districts. The clerk to the licensing justices sent to all of them a circular telling them that on the 6th March they would be called upon to decide whether the matter should be reopened. On the 6th March the justices met and considered the desirability of reopening the question of permitted hours in the Wandsworth division. They decided that in the altered circumstances it was in the public interest that the appropriate means should be taken to ascertain public opinion on the matter. They announced their decision to that effect in open court, and then further adjourned the general annual licensing meeting until the 20th March for that purpose. It was not possible for the justices to consider the alteration of hours on the 6th March, as the statutory notices had to be given, which the justices caused to be done before the 20th. On that date, the justices, having heard supporters and opponents of the change, varied the permitted hours on weekdays from 5 p.m.–10 p.m. to 5.30 p.m.–10.30 p.m. It was now sought to quash that order on the ground of want of jurisdiction in that the order was made at what purported to be an adjourned general annual licensing meeting not held within one month of the date of the original meeting.

LORD HEWART, C.J., said that the sequence of events was perfectly plain. The general annual licensing meeting was held on the 7th February, and a preliminary decision was reached. It was adjourned until the 6th March, when the letter from the Victuallers' Association, of which the clerk had properly given notice to the justices, came up for discussion. It was true that the rules mentioned the making of a "proposal," but he was unable to draw any distinction between what was done here and the making of a proposal. That proposal was circulated to the justices before the 6th March, and when they met on that day it was before them. It was plain that they then proceeded as far as they could to consider it. Further, they came to a decision—that the appropriate means should be taken to ascertain public opinion and to hear interested parties at an adjourned hearing. That being so, what happened on the 20th March was a continuation of what began on the 6th. On what ground was it said that the justices at the adjourned meeting on the 20th could have no jurisdiction? It had been held that business begun within the month could be adjourned beyond it, but that no new business could then be begun. It was idle to contend that what was done here on the 20th March was not a continuation of what was begun on the 6th, when, for obvious reasons, it could not be finished on that day. The rule, therefore, should be discharged.

HUMPHREYS and DU PARCQ, JJ., agreed.

COUNSEL: *Montgomery*, K.C., and *Christmas Humphreys* showed cause for the South West London Licensed Victuallers' Protection Association; *Murphy*, K.C., and *Sidney Lamb* showed cause for the justices; *F. J. Tucker*, K.C., and *Astell Burt* in support.

SOLICITORS: *Oswald Hanson & Smith*; *Thomas Baines*; *Merrimans*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Murray *v.* Schwachman Ltd.

Hilbery, J. 20th, 21st May, 1936.

FACTORIES AND WORKSHOPS—DANGEROUS MACHINE—EMPLOYEE TOLD BY EMPLOYER THAT HE NEED NOT USE GUARD—STATUTORY DUTY ON EMPLOYEE TO USE GUARD—EFFECT OF AN EMPLOYEE'S RIGHTS—INFANT—ELECTION TO TAKE WORKMEN'S COMPENSATION—SUBSEQUENT DECISION TO PROCEED AT COMMON LAW—INFANT'S RIGHTS—FACTORY AND WORKSHOP ACT, 1901 (64 Vict. and 1 Edw. 7, c. 22), s. 10—WOODWORKING MACHINERY REGULATIONS, 1922 (S.R. & O. 1922, No. 1196), regs. 17, 23—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 29.

Action for damages for personal injury.

The plaintiff, an infant, was a spindle hand employed in the defendants' factory. In November, 1935, he was at work on a spindle machine when his hand came into contact with a rotating saw, and he suffered severe injury, losing two fingers of the right hand. In May, 1935, a factory inspector had ordered the machine in question to be provided with a guard. The defendants' managing director considered the guard to be unnecessary, and its presence caused considerable complications in operating the machine. He accordingly told the plaintiff that he need not use the guard, and the guard was off when the accident happened. The defendants admitted liability to pay workmen's compensation, and they made an offer of a lump sum of £75, which the plaintiff, by his solicitor, refused. He elected to take weekly payments of 30s. These were continued until January, 1936, when the defendants gave notice under s. 12 (3) of the Workmen's Compensation Act, 1925, to terminate the payments. After medical examination, the plaintiff received notice that the payments would be discontinued. He thereupon brought

the present action, alleging a breach by the defendants of their statutory duty to keep the machine properly guarded.

HILBERY, J., said that the defendants contended that they were not guilty of breach of the duty imposed on them by s. 10 of the Factory and Workshops Act, 1901, and that the plaintiff had himself failed to maintain the guard in proper adjustment as required by reg. 23 of the Woodworking Machinery Regulations, 1922. They also contended that the plaintiff had elected to accept workmen's compensation, and that the election was beneficial to him as an infant, in the circumstances. They relied on s. 29 of the Workmen's Compensation Act, 1925. The machine, he (his lordship) found, was a dangerous one. Section 10 of the Act of 1901 required the defendants to provide and maintain a proper guard. Regulation 17 of the Regulations of 1922 imposed a similar duty on them with regard to machines like that in question. But reg. 23 made it the duty also of an employee, and therefore of the plaintiff, to " use and maintain in proper adjustment the guard provided in accordance with these regulations . . ." The very breach of statutory duty here alleged against the defendants was also, by virtue of that regulation and of the circumstances of the accident, the breach of statutory duty which the defendants alleged against the plaintiff. The plaintiff could not escape the obligation to perform the duty imposed by Parliament upon him absolutely. He could not even establish his cause of action without at the same time establishing a breach of the statutory duty imposed on himself. That, in his (his lordship's) opinion, disabled the plaintiff from succeeding in a court of law. No employer could, by giving an order, discharge the plaintiff's obligation to obey the regulation, although he might, by giving an order, waive any contractual duty under which an employee might be to him. As Lord Birkenhead, L.C., said in *Moore and Co.* v. *Donnelly* [1921] A.C. 329, at p. 339, a statutory prohibition cannot " be made the subject of waiver or of informal modification." Lord Shaw had made observations in the same sense in that case, at p. 348. It was, therefore, unnecessary for him (his lordship) to decide the question of the plaintiff's election to take workmen's compensation. The case provided an illuminating example of the value of the Workmen's Compensation Acts, and of the wisdom of the plaintiffs' acceptance of compensation. His (his lordship's) attention had been called to *Stephens* v. *Dudbridge Ironworks Co. Ltd.* [1904] 2 K.B. 225. That case made it clear that, whenever an infant had made an election under the Workmen's Compensation Act, and had thereby become debarred from recovering at common law, the matter to be considered was whether the election, treated as a contract by the infant, was for his benefit. If the determination of that matter was to be in the light of the circumstances as they were known at the time when the election was made, one set of considerations would apply. If the court were entitled to look at the matter with the wisdom which came after the event, quite a different set of considerations would apply. In the view which he (his lordship) took of this action, it was unnecessary for him to decide that point. There must be judgment for the defendants, but, in view of the possibility of an appeal, he would assess the damages at £750.

COUNSEL: *David Weitzman*, for the plaintiff; *Edgar Dale*, for the defendants.

SOLICITORS: *T. V. Edwards; C. St. A. Butcher.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Commissioners of Inland Revenue *v.* Pearson. Same *v.* Pratt.

Lawrence, J. 28th May, 1936.

REVENUE—SUR-TAX—DIVIDENDS NOT DECLARED AS FREE OF TAX—WHETHER ASSESSABLE AT DECLARED AMOUNT OR AT THAT AMOUNT PLUS INCOME TAX—INCOME TAX ACT, 1842 (5 & 6 Vict. c. 35), s. 54—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), All Schedules Rules, r. 20—FINANCE ACT, 1924 (14 & 15 Geo. 5, c. 21), s. 33 (1)—FINANCE ACT, 1927 (17 & 18 Geo. 5, c. 10), s. 39 (2)—FINANCE ACT, 1931 (21 & 22 Geo. 5, c. 28), s. 7.

Appeals by case stated from decisions of the Special Commissioners of Income Tax, allowing appeals by Pearson and Pratt against assessments to sur-tax made upon them respectively. In the case of Pearson, the facts were these: He was the beneficial owner of 5,000 deferred shares in W. Pearson, Limited. In March, 1934, a dividend of 130 per cent. was declared on the shares, for which Pearson received a cheque for £6,500. Accompanying the cheque was a letter stating that it had been decided that the company should not exercise its statutory, but optional, right to deduct income tax when paying the dividend, and that the dividend was therefore being paid in full. The letter went on to state the amount of tax which might have been deducted, namely, £1,625. In his return of total income for sur-tax for 1933-34, Pearson returned £6,500 in respect of the above dividend. The Crown claimed that the amount which ought to have been returned was £8,666 13s. 4d., being £6,500, plus £2,166 13s. 4d. in respect of income tax at the standard rate of 5s. in the £. The profits of the company for the year were duly charged to income tax in the hands of the company. The dividend in question was paid out of accumulated profits, and Pearson's right to it depended on the terms of the resolution declaring it. The Special Commissioners were of opinion that Pearson was entitled to £6,500, which he had received. If the company had exercised their right to deduct tax, he would have received £6,500 less £1,625, namely, £4,875. They did not consider that the dividend resolution of March, 1934, could be read as equivalent to the declaration of a dividend free of income tax. They therefore held that the £6,500 was not a net amount, but was the actual sum paid and assessable, and they accordingly allowed the appeal. In Pratt's case, the facts were these: In January, 1934, a company in which Pratt held shares passed a resolution declaring a dividend of $7\frac{7}{8}$ per cent., and sent Pratt a voucher in these terms: " Gross dividend of $7\frac{7}{8}$ per cent. on 40,000 shares in the above company for the year ended 31st December, 1933, £3,150. Amount actually paid, £3,150." In his return of total income for sur-tax for the year ended April, 1934, Pratt included the sum of £3,150, being the actual amount received by him, and he contended that the dividend was a " gross sum " and that the fact that the company had not exercised its right to deduct income tax did not make it a " net " sum. The Crown contended that, in estimating the total income, the correct amount to be included in respect of the dividend was £4,200, namely, £3,150, with the addition of tax at the standard rate for the year. The Special Commissioners were of opinion that the £3,150 was a gross amount and was the proper amount assessable to sur-tax in respect of the dividend, and they accordingly allowed the appeal. *Cur ad. vult.*

LAWRENCE, J., said that the question in the cases was whether the respondents were bound to bring in for sur-tax dividends declared without a statement that the dividends were free of income tax or less tax, at the declared amounts of the dividends or at those amounts plus income tax. The Commissioners had considered that the cases were governed by *Neumann* v. *Commissioners of Inland Revenue* [1934] A.C. 215, and the question depended on whether that case or, as the Crown contended, *Ashton Gas Co.* v. *Attorney-General* [1906] A.C. 10, was applicable. It was argued for the Crown that the case was governed by the *Ashton Gas Case, supra*, which had been followed and approved in *Samuel* v. *Commissioners of Inland Revenue* [1918] 2 K.B. 553, and in *Michelham's Trustee* v. *Commissioners of Inland Revenue* (1929), 15 Tax Cas. 737; that *North British Railway Co.* v. *Scott* [1923] A.C. 37, and *Hartland* v. *Diggines* [1926] A.C. 289, supported the same view; that the decision in the *Ashton Gas Case, supra*, was that a dividend not declared as free of tax was in fact a dividend of its stated amount plus

the amount of income tax thereon; and that *Neumann's Case, supra*, was decided on peculiar facts, and was therefore inapplicable. It was argued for the respondents that *The Ashton Gas Case, supra*, was distinguishable, because it was decided on s. 54 of the Income Tax Act, 1842, and not on r. 20 of the General Rules. He, his lordship, was of opinion that the contention of the Crown was correct. The reasoning of *The Ashton Gas Case, supra*, appeared to him directly applicable to the present cases. In his opinion, the difference between r. 20 and s. 54 of the Act of 1842 was not material. Although the decision of the House of Lords in *Neumann's Case, supra*, required careful consideration, he was of opinion that the facts there were different from those of the present cases, and the appeals must be allowed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. Hills*, for the Crown; *R. E. Borneman*, for both respondents.

SOLICITORS: *Solicitor of Inland Revenue; Linklaters & Paines; Romer, Skan & Brashier.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

In the Estate of Marie Musurus, deceased.

Sir Boyd Merriman, P. 30th June, 1936.

PROBATE—SUCCESSION—*Bona vacantia*—GOODS IN ENGLAND BELONGING TO TURKISH SUBJECT DYING WITHOUT HEIRS ACCORDING TO TURKISH LAW—RIVAL CLAIMS OF CROWN AND TURKISH GOVERNMENT—DISPOSITION OF OWNERLESS GOODS IN TURKEY RESTRICTED TO CERTAIN OBJECTS—QUALITY OF SUCCESSION THE SAME IN BOTH ENGLISH AND TURKISH LAW—CROWN'S PRIORITY—*In re Barnett's Trusts* [1902] 1 Ch. 847, APPLIED.

These were cross-motions by the Treasury Solicitor and the Counsellor of the Turkish Embassy, respectively, to determine the title to administration of the goods left in England by Madame Marie Musurus, who died intestate in 1915 domiciled in Turkey. Madame Musurus, who was the widow of a former Turkish ambassador to Great Britain, was of Greek origin and a Christian, but at the time of her death in Switzerland in 1915 was of Turkish nationality and domicil. She left estate in Turkey, and in addition goods to the value of £3,574 in England. In 1921 a sister of Madame Musurus obtained a grant to the English estate, but that grant was subsequently revoked in 1932 on the ground that, according to the law of the old Ottoman Empire, none but a Turkish subject was entitled to succeed to the property of a Turkish subject on intestacy, the sister and other next-of-kin not being Turkish subjects. The Turkish Government now applied for a grant as on an intestacy. It was submitted on behalf of the Turkish Government that, as the court must apply the law of the domicil, the Turkish Government was entitled to the grant. For the Crown it was contended that the Treasury Solicitor was entitled to a grant on the ground that, according to Turkish law, the goods were ownerless and therefore in the nature of *bona vacantia*. Expert evidence was received as to the Turkish law applicable.

Sir BOYD MERRIMAN, P., in giving judgment, said that it was conceded that the law applicable was the law, as it was in 1915, of the Ottoman Empire. The question to be determined was whether on intestacy personal property of the deceased in England fell to the Crown as *bona vacantia*, or went to the present Turkish Government, which claimed priority. It was further conceded that if the quality of the claim of the Turkish Government were in substance the same as that of the Crown, viz., the equivalent in Turkey of *bona vacantia*, the claim of the Crown would prevail, *vide In re Barnett's Trusts* [1902] 1 Ch. 847. The Turkish Government could not claim in the capacity of heir, because, as there were no persons who could be described as heirs in Turkish law, the ultimate recipient of goods left by an intestate would be the Beit-ul-Mal, the Ottoman Public Treasury. That office, having received ownerless property, disposed of it through one of its departments for the benefit of poor and indigent Moslems and for other public purposes on behalf of the Moslem community. It was urged that, because the application of such ownerless property was so restricted by Turkish law to certain objects, it was impressed with something in the nature of a trust, and it was impossible to liken it to *bona vacantia* as understood in English law. But in his (his lordship's) view the property in question, whether *bona vacantia* in England or received by the Beit-ul-Mal in Turkey, was in the strictest sense of the word ownerless. He could not see that the limited application of the property made any difference to the character of the goods themselves as ownerless. In the result, the Turkish claim could not prevail against the corresponding claim of the Crown. There would be a grant in favour of the Crown accordingly, but there would be no order as to costs.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *John Foster*, for the Crown; *Linton Thorp*, K.C., and *Talbot Dyer*, for the Turkish Embassy.

SOLICITORS: *The Treasury Solicitor; Leader, Plunkett and Leader.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

B. *v.* B.

Langton, J. 22nd July, 1936.

DIVORCE—PLEADING—HUSBAND'S PETITION PRAYING FOR DISCRETION—ANSWER CHARGING ADULTERY WITH CROSS-PRAYER—ALLEGATION BASED ON FACT OF APPLICATION FOR DISCRETION ONLY—CHARGE AGAINST HUSBAND STRUCK OUT FOR WANT OF PARTICULARITY—DIVORCE RULE 30(c)—*Bevis* v. *Bevis* [1935] P. 22, 86; 79 SOL. J. 194, DISCUSSED.

Summons adjourned into court.

On 18th March, 1936, the husband filed a petition for dissolution of marriage, in which he asked that the discretion of the court might be exercised in his favour. The wife, in her answer, denied the charges against her, and in para. 2 alleged adultery against the husband with a cross-prayer for dissolution. At the same time she delivered particulars of para. 2 as follows: "the respondent relies on the fact that the petitioner has asked that your lordship will exercise your discretion in his favour. Beyond this she is unable to give any particulars of the petitioner's adultery." The husband thereupon took out a summons before the registrar asking that para. 2 of the wife's answer should be struck out, to which application the registrar acceded, adopting the view that the pleading was insufficient. The wife now appealed. Counsel on behalf of the wife submitted that the wife was entitled to put forward the bare allegation that the petitioner had committed adultery because the petitioner, in stating that he was asking for the discretion of the court, had given full and complete notice that he had committed adultery. Secondly, that if it was not a full and complete notice, it was a fact upon which the wife was entitled to allege that the petitioner had committed adultery. Further, that it was no hardship that the charge should be stated thus without particulars because the wife had given notice that she would, and could, only rely upon evidence which the petitioner himself might give. Counsel for the husband submitted, *inter alia*, that the test to be applied was whether the wife's allegation would stand on its own feet independently of an allegation to be found in the petition, or, as it might be in the King's Bench Division or Chancery Division, a statement of claim?

LANGTON, J., in giving judgment, said that the matter was a question of pleading only and did not concern the question, which was canvassed in *Bevis* v. *Bevis* [1935] P. 22, 86 (C.A.); 79 SOL. J. 194, of admissibility of evidence after publication to the respondent of a petitioner's discretion statement, and

at that time different rules governed the practice in discretion cases. The new rules were set out at p. 99 of the report. The true test to apply was whether an allegation in a defence could stand on its own feet independently of allegations contained in the petition or statement of claim. If that test were applied, it was clear that the wife's counter-allegation in the present case could not stand for a moment without the support which it obtained from the prayer to the petition. If the petition were to be discontinued by leave, the counter-allegation in the answer would at once fall to the ground. The appeal therefore failed, the cross-charge in the wife's answer being unable to stand for want of particularity.

COUNSEL: *C. L. Beddington*, for the wife; *P. B. Morle*, for the husband.

SOLICITORS: *Braund & Hill*; *Croft & Mortimer*.

(Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.)

[For Table of Cases previously reported in current volume see page iii of Advertisements.]

Societies.

The Society of Public Teachers of Law.

The Twenty-eighth Annual Meeting of the Society was held at the University of Bristol on Friday and Saturday, 17th and 18th July, under the Presidency of Professor R. W. Lee, Rhodes Professor of Roman-Dutch Law in the University of Oxford, and Reader to the Council of Legal Education. The guests of the Society included Lord Justice Greene, Professor Mario Sarfatti (Italy), Professor R. David (Grenoble) and Professor V. Bousquet (Algiers).

In his address on "Comparative Law and Comparative Lawyers," the President reviewed the difficulties of defining comparative law, and sketched the history of comparative legal studies in England and abroad during the past fifty years. Professor Lee, citing the late Lord Bryce, spoke of the "palpably practical" aim of such studies in addition to their purely scientific aspect and value. He said that the study of comparative law was closely associated with the project of an Institute of Legal Research in this country, which he hoped might at long last be realised in view of the recommendations of the Lord Chancellor's Committee on Legal Education over which Lord Atkin presided. He instanced restriction upon freedom of testamentary disposition as a topic for which there was a case for enquiry by such an Institute, not merely into the laws of other countries, but also into the consequent social reactions in countries where restrictions prevailed. He had listened that week with great satisfaction to Lord Macmillan's speech at the Cambridge Congress of Universities of the British Empire, in the course of which was read a letter from the Lord Chancellor promising that early attention would be given to the question of the proposed Institute.

Professor Lee urged the Society to consider enlarging its activities by instituting standing committees on such subjects as legal education, law reform and comparative law. He had reason to believe that a Committee of the Society on Comparative Law could establish contact which would be welcomed by the British National Section of the International Chamber of Commerce. He concluded by asking for the appointment of a delegation to the International Congress of Comparative Law to be held at The Hague in August, 1937.

Lord Justice Greene gave an address on "Jurisprudence and the Practising Lawyer," in the course of which he emphasised the importance to the advocate who wished also to be a trained lawyer of a good grounding of legal principle before he embarked upon his professional career. The complication of modern statutes and of modern business methods seemed to call more and more for lawyers who specialised in particular classes of cases. This growing habit of specialisation made it all the more important that the lawyer's learning should have a solid foundation in the science of law and its principles. His own experience and observation had given him a profound belief in the great importance of legal studies in a free and civilised community. A student of law should realise that he was not merely learning something academic or something which would help him to earn his living, but what was in truth an indispensable foundation of our liberties.

The lawyer, unlike the man of action, was not an opportunist. Hence lawyers were the subject of impatient dislike on the part of men of action. The man of action wanted to get things done; the lawyer stood in his way and told him that he could not do them on principle. This conflict appeared in a number of ways. It lay at the bottom of that tendency in modern legislation to place under the executive control of the bureaucracy matters which from their nature ought to come under the administration of the law. An even more striking example was to be found in times of revolutionary upheaval. It was then that not merely the law, but the legal mind was regarded as an obstruction. In the case of certain societies in which the revolutionary doctrine with regard to law was that it should be considered as an executive instrument, the conception of law was no longer that of a system of principles based upon some ultimate synthesis and to be applied accordingly, but was the reverse.

Dr. W. W. Veale (Bristol) read a paper on "The Bristol Tolzey Court," in which he confined his attention in the main to its early history. After pointing out that the actual evidence was unexpectedly scanty, he dealt with the general institutional development of the Bristol Courts, including the Tolzey Court, from which it was clear that, although the Court under that name was probably not earlier than the 14th century, yet, none the less, it contained elements which were very much earlier. After giving an account of the business of the Tolzey Court, he drew attention to the importance of the jurisdiction which it exercised, and he also sketched its procedure, which showed a steady development from the fourteenth century until the early seventeenth century, and he emphasised the fact that from a very early date it overcame difficulties experienced by the Common Law in the case of a debtor who did not appear. He then gave a short account of the course of proceedings in actual cases illustrating the procedure which he had described, and concluded his paper with a general summary of the Court in its modern aspect.

At the Annual General Business Meeting, the Society endorsed the President's proposal for the appointment of Standing Committees.

The action of the General Committee in asking the President to approach the Lord Chancellor urging the appointment by H.M. Government of a small Committee to investigate the proposal for an Institute of Legal Research in London was unanimously approved.

The Annual Report showed that the membership of the Society was now 226, and contained, in addition to a full reference to the Institute of Legal Research, two matters of interest. (1) Legal Education Committee. The Society had, at the request of the Lord Chancellor, nominated six representatives on the proposed Legal Education Advisory Committee, viz.: Mr. H. A. Hollond, Professor J. D. I. Hughes, Professor H. F. Jolowicz, Professor R. W. Lee, Professor C. E. Smalley-Baker, Dr. E. C. S. Wade. (2) Civil Service Examination (Administrative Group). A deputation from the Society was received by the Civil Service Commissioners, and laid before them recommendations to enable a candidate who had taken a Final university examination in law to proceed to the Civil Service Examination in the same year and to be examined exclusively in law for his optional subjects. (These recommendations have been adopted by the Commissioners.)

Professor H. F. Jolowicz (University of London) and Mr. H. A. Hollond (University of Cambridge) were elected President and Vice-President for the ensuing year.

Dr. E. C. S. Wade (University of Cambridge) and Mr. P. A. Landon (University of Oxford and The Law Society's School) were re-elected Hon-Secretary and Honorary Treasurer.

The Council of the University of Bristol entertained members of the Society at dinner on the Friday evening, the Pro-Chancellor of the University (Dr. Badock) presiding. There were also present The Right Hon. Lord Justice Greene, His Honour Judge Wethered and the following members of the University and their guests: Professor M. M. Lewis (Dean of the Faculty of Law), Professor V. Bousquet (University of Algiers), Mr. W. Sefton Clarke, Mr. W. L. Cooper, Professor R. David (University of Grenoble), Dr. O. C. M. Davis, Professor Dobson, Mr. Josiah Green (Town Clerk of Bristol), Professor W. W. Jervis, Mr. Cyril Meade King, Mr. H. L. Leonard (President of the Bristol Law Society), Professor R. B. Mowat, Professor Mario Sarfatti (University of Turin), and Professor W. Hamilton Whyte; and amongst members of the Society, the following: Professor R. W. Lee (President), Professor H. F. Jolowicz (Vice-President), Dr. A. E. Chapman, Professor R. S. T. Chorley, Professor E. Merrick Dodd (Harvard University), Professor R. A. Eastwood, Mr. John Foster, Dr. Clement Gatley, Dr. F. M. Goadby, Professor H. Goitein, Professor A. L. Goodhart, Professor Sir William Holdsworth, Mr. H. A. Hollond (Vice-President-Elect), Professor J. D. I. Hughes, Dr. W. Ivor Jennings, Dr. Kahn Freund, Dr. G. W. Keeton, Mr. P. A. Landon (Hon. Treasurer), Sir Benjamin Lindsay, Professor D. Hughes Parry, Dr. H. Potter, Dr. G. R. T.

Radcliffe, Dr. W. A. Robson, Professor C. E. Smalley-Baker Dr. J. Stone, Dr. W. W. Veale, Dr. S. G. Vesey-FitzGerald Dr. E. C. S. Wade (Hon. Secretary) and Dr. F. P. Walton.

The University entertained the members of the Society throughout the meeting, placing Wills Hall, one of the University's Halls of Residence, at their disposal. The meeting coincided with the conferment earlier in the month of the first LL.B. degrees in the Faculty of Law, which was founded by the University three years ago, with the assistance of a large gift of money subscribed by members of the Bristol Law Society and other practising lawyers in the West.

The Bristol Law Society gave a luncheon to the visitors on Saturday, the President (Mr. H. L. Leonard) being in the chair.

The annual meeting for 1937 will be held in the University of London.

The North Staffordshire and District Law Society.

The annual meeting of the North Staffordshire and District Law Society Limited was held at the North Stafford Hotel, Stoke-upon-Trent, on the 21st July, 1936, when the following appointments were made: President, Mr. W. H. Abberley (Burslem), Vice-President, Mr. G. E. Phillimore (Hanley), Hon. Secretary, Mr. F. Livingstone Dickson (Hanley), Hon. Treasurer, Mr. G. W. Huntbach (Hanley), Hon. Auditors, Messrs. P. J. McKnight and J. F. Moxon (Hanley).

Parliamentary News.

Progress of Bills.

House of Lords.

The following Bills received the Royal Assent on the 31st July:—

Aberdeen Corporation Order Confirmation.
Aberdeen Corporation (Streets, Buildings, Sewers, etc.) Order Confirmation.
Air Navigation.
Appropriation.
Axbridge Rural District Council.
Birmingham Corporation.
Bognor Regis Urban District Council.
Buckingham's Charity (Dunstable) Scheme Confirmation.
Cattle Industry (Emergency Provisions).
Cheltenham and Gloucester Joint Water Board, etc.
Coventry Corporation.
Crown Lands.
Dalton-in-Furness Urban District Council.
Dover Corporation.
Education.
Education (Scotland).
Epsom and Walton Downs Regulation.
Firearms (Amendment).
Gas Light and Coke Company's (No. 1).
Gas Light and Coke Company's (No. 2).
Great Western Railway (Additional Powers).
Grimsby Corporation (Trolley Vehicles) Order Confirmation.
Health Resorts and Watering Places.
Hereford Corporation.
Hornchurch Urban District Council.
Housing.
Ilfracombe Urban District Council.
Isle of Man (Customs).
Land Drainage (River Stour, Kent) Provisional Order Confirmation.
Land Drainage (Witham and Steeping Rivers) Provisional Order Confirmation.
Liverpool Corporation.
London and Middlesex (Improvements, etc.)
London and North Eastern Railway (General Powers).
London and North Eastern Railway (London Transport).
London County Council (Money).
London Passenger Transport.
Manchester Corporation.
Manchester Ship Canal.
Merton and Morden Urban District Council.
Midwives.
Ministry of Health Provisional Order Confirmation (Barnsley).
Ministry of Health Provisional Order Confirmation (Essex).
Ministry of Health Provisional Order Confirmation (Heathfield and District Water).
Ministry of Health Provisional Order Confirmation (Helston and Porthleven Water).
Ministry of Health Provisional Order Confirmation (Leeds).
Ministry of Health Provisional Order Confirmation (North Herts Joint Hospital District).
Ministry of Health Provisional Order Confirmation (Plympton St. Mary).
Ministry of Health Provisional Order Confirmation (Ripon).
Ministry of Health Provisional Order Confirmation (St. Helens).
Ministry of Health Provisional Order Confirmation (West Hartlepool).
Mortlake Crematorium.
Pier and Harbour Order (Cowes) Confirmation.
Pier and Harbour Order (Keyhaven) Confirmation.
Pier and Harbour Order (Maryport) Confirmation.
Pier and Harbour Order (Paignton) Confirmation.
Pier and Harbour Order (Whitley Bay) Confirmation.
Private Legislation Procedure (Scotland).
Provisional Orders (Marriages) Confirmation.
Public Health.
Public Health (London).
Sea Fisheries (Ribble) Order Confirmation.
Sea Fisheries (Truro) Order Confirmation.
Shops (Sunday Trading Restriction).
Solihull Urban District Council.
South Metropolitan Gas.
South Suburban Gas.
Surrey County Council.
Thornton Cleveleys Improvement.
Tithe.
Weights and Measures.
Weights and Measures, Sale of Coal (Scotland).
Wolverhampton Corporation.
Wrexham and East Denbighshire Water.
York Gas.

Questions to Ministers.

COURTS OF SUMMARY JURISDICTION.

Sir ARNOLD WILSON asked the Home Secretary whether his attention has been called to the growing volume and complexity of the laws administered by and governing the practice of courts of summary jurisdiction; and whether he will consider setting up a committee to consider what amendments of the law are desirable for facilitating consolidation and securing simplicity and uniformity, and the possibility of extending the employment of stipendiary magistrates.

Sir J. SIMON: I realise that a consolidation of the existing law would have great advantages in facilitating the work of courts of summary jurisdiction, but it has hitherto proved impracticable to undertake the prolonged survey which would be necessary before a consolidation Bill could be framed. The question has been noted for further consideration when opportunity can be found. In the meantime, as the Under-Secretary of State informed my hon. Friend in reply to a question on Tuesday last, I am considering the possibility of inquiring into certain special aspects of the work of the courts. I think that progress is more likely to be made in this way than by any general inquiry covering a variety of different issues. [30th July.

HIGH COURT (OFFICIAL SHORTHAND WRITERS).

Mr. DOBBIE asked the Attorney-General whether he can make any statement on the subject of the proposed institution of a system of official shorthand writing to the High Court of Justice or whether the legal authorities have given up the idea of instituting any official system.

THE SOLICITOR-GENERAL: I understand that the Committee set up to inquire into the question of Official Shorthand Writers have now signed and are about to present their Report. I am not, therefore, able to make any statement upon this subject until my noble Friend, the Lord Chancellor, has had an opportunity of considering the recommendations contained in the Report. [31st July.

The Lords Commissioners of His Majesty's Treasury, after consultation with the Minister of Agriculture, have appointed Sir CHARLES JOHN HOWELL THOMAS, K.C.B., K.C.M.G., to be Chairman of the Tithe Redemption Commission established by the Tithe Act, 1936. The following, who will act in an honorary capacity, have been appointed to be members of the Commission, namely: Mr. William Allen, K.C., Mr. Arthur Edwin Cutforth, C.B.E., F.C.A., Mr. Edwin Fisher, and Sir Norman Vernon, Bt. Communications to the Commission should be addressed by letter to The Secretary, Tithe Redemption Commission, Eagle House, 90, Cannon-street, E.C.4.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the appointment of Mr. NAZIM ALI as a Puisne Judge of the High Court of Judicature at Calcutta in the vacancy that will occur on the retirement of Mr. Justice M. N. Mukerji on 28th October, 1936.

The King, on the recommendation of the Home Secretary, has been pleased to approve the following appointments:—

Mr. A. M. LYONS, K.C., to be Recorder of Great Grimsby in the place of Mr. C. L. Attenborough, who has resigned; and Mr. T. W. C. CARTHEW, K.C., to be Recorder of Maidstone in the place of Mr. Theobald Mathew, who has resigned. Mr. Lyons was called to the Bar by the Middle Temple in 1922 and took silk in 1933. Mr. Carthew was called to the Bar by the Inner Temple in 1910, and took silk this year.

Mr. V. A. LEWIS, the Minister of Justice and Defence, has been appointed a Judge of the High Court of Southern Rhodesia.

Mr. J. A. COUTTS, M.A., LL.B., Barrister-at-Law, Assistant Lecturer in Law at King's College, London, has been appointed Lecturer in Law at Queen's University, Belfast. Mr. Coutts was called to the Bar by Gray's Inn in 1933.

Mr. KENNETH B. MOORE, assistant solicitor to St. Helens Corporation, has been appointed prosecuting solicitor to Southport Corporation in succession to Mr. Derek Osborne, who has been appointed assistant town clerk of Barnsley. Mr. Moore was admitted a solicitor in 1934.

Mr. J. H. CRAINE, chief clerk at the West London Police Court since 1929, has been appointed deputy-principal of the probation department of the Home Office. The position is a new one, created with the object of affording more co-operation between the magisterial bench and probation officers.

Professional Announcements.

(2s. per line.)

Messrs. VIZARD, OLDHAM, CROWDER & CASH, of 51, Lincoln's Inn Fields, London, W.C.2, and 21, Tothill-street, Westminster, S.W.1, announce that they have taken into partnership, as from the 1st July, 1936, Mr. FRANCIS EDWARD YOUNG and Mr. ALFRED SAMUEL CASH, a son of Mr. S. E. Cash, both of whom have been associated with the firm for some years. The name of the firm will remain unchanged.

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

Mr. E. A. Leal, M.B.E., the Senior Examiner in the Companies (Winding-up) Department of the Board of Trade, retired last week after forty-five years' service. Mr. Leal joined the department when it was established in January, 1891, and has been concerned in the liquidation of numerous public companies.

The Honourable Society of Lincoln's Inn announce that the first Cassel Scholarship has been awarded to Robert Yewdall Jennings, of Downing College, Cambridge. The following have been awarded Cholmeley Scholarships: Raymond Henry Walton, of Balliol College, Oxford; Montague Philip Solomon, of Magdalen College, Oxford; David Moerel Nenk, of Gonville and Caius College, Cambridge; and Geoffrey de Freitas, of Clare College, Cambridge.

Mr. Charles Henry Simonds, M.B.E., of Shipley, Yorks, Clerk to the Recorder of Bradford for many years, who died on 23rd April, left property of the value of £18,826, with net personalty £18,745. Subject to a life interest he left £150 to the Bradford Cinderella Club; £150 to Craig Convalescent Home for Children, Morecambe; £75 to Shipley Cinderella Club; £660 to Saltaire (Salts) Hospital; £110 to Keighley Technical College for prizes; £210 to the Vicar and Churchwardens of Burston Parish Church.

Rules and Orders.

THE COUNTY COURT RULES, 1936. Dated July 29, 1936. [S.R. & O. 1936, No. 626/L.17. Price 10s. 6d. net.]

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 13th August, 1936.

	Div. Months.	Middle Price 5th Aug. 1936.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	114½	3 9 10	3 0 5
Consols 2½%	JAJO	85	2 18 10	—
War Loan 3½% 1952 or after	JD	106¾	3 5 7	2 19 3
Funding 4% Loan 1960-90	MN	117½	3 8 1	2 19 4
Funding 3% Loan 1959-69	AO	103½	2 18 0	2 15 10
Funding 2½% Loan 1956-61	AO	93½	2 13 6	2 17 5
Victory 4% Loan Av. life 23 years	MS	116½	3 8 8	2 19 11
Conversion 5% Loan 1944-64	MN	118¾	4 4 2	2 1 9
Conversion 4½% Loan 1940-44	JJ	109½	4 2 2	2 9 2
Conversion 3½% Loan 1961 or after	AO	108	3 4 10	3 0 9
Conversion 3% Loan 1948-53	MS	103¼xd	2 18 1	2 13 7
Conversion 2½% Loan 1944-49	AO	101½	2 9 3	2 5 6
Local Loans 3% Stock 1912 or after	JAJO	96½	3 2 2	—
Bank Stock	AO	377	3 3 8	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87¾	3 2 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96¼	3 2 4	—
India 4½% 1950-55	MN	116½	3 17 3	3 0 9
India 3½% 1931 or after	JAJO	99½	3 10 4	—
India 3% 1948 or after	JAJO	87½	3 8 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	113½	3 10 6	2 16 5
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 14 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	96	2 12 1	2 15 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 0
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3 12 2	3 6 9
Canada 4% 1953-58	MS	109½xd	3 13 1	3 5 2
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	100⅝	2 19 8	2 18 8
Nigeria 4% 1963	AO	114	3 10 2	3 4 4
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 0
South Africa 3½% 1953-73	JD	107	3 5 5	2 19 5
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	98	3 1 3	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106½	3 5 9	2 19 8
Leeds 3% 1927 or after	JJ	94	3 3 10	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	79½xd	3 2 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95xd	3 3 2	—
Manchester 3% 1941 or after	FA	96	3 2 6	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100½xd	2 9 9	—
Metropolitan Water Board 3% "A" 1963-2003	AO	97	3 1 10	3 2 1
Do. do. 3% "B" 1934-2003	MS	97½xd	3 1 6	3 1 9
Do. do. 3% "E" 1953-73	JJ	100	3 0 0	3 0 0
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 17 10
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 1 6
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	107	3 5 5	3 3 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	115	3 9 7	—
Gt. Western Rly. 4½% Debenture	JJ	125	3 12 0	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	133	3 15 2	—
Gt. Western Rly. 5% Preference	MA	122	4 2 0	—
Southern Rly. 4% Debenture	JJ	113½	3 10 6	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3 11 9	3 6 8
Southern Rly. 5% Guaranteed	MA	132½	3 15 6	—
Southern Rly. 5% Preference	MA	122	4 2 0	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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Stock
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Approximate Yield with Redemption	
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2 16 5	
2 14 0	
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3 7 0	
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2 18 8	
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3 8 0	
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